

STATE LIBRARY OF PENNSYLVANIA



3 0144 00277131 9


CLASS 327 BOOK K 256

VOLUME 2



PENNSYLVANIA
STATE LIBRARY

15-2 v.



Digitized by the Internet Archive
in 2018 with funding from

This project is made possible by a grant from the Institute of Museum and Library Services as administered by the Pennsylvania Department of Education through the Office of Commonwealth Libraries

THE
DEVELOPMENT OF
EXTRATERRITORIALITY
IN CHINA

LONGMANS, GREEN AND CO. LTD.

39 PATERNOSTER ROW, LONDON, E.C. 4

6 OLD COURT HOUSE STREET, CALCUTTA

53 NICOL ROAD, BOMBAY

167 MOUNT ROAD, MADRAS

LONGMANS, GREEN AND CO.

55 FIFTH AVENUE, NEW YORK

221 EAST 20TH STREET, CHICAGO

TREMONT TEMPLE, BOSTON

210 VICTORIA STREET, TORONTO

THE DEVELOPMENT OF EXTRATERRITORIALITY IN CHINA

BY

G. W. KEETON, M.A., LL.M.
Of Gray's Inn, Barrister-at-Law

Senior Lecturer in Law, Manchester University; late Assistant
Tutor to the Law Society; Reader in Law and Politics
in the University of Hong Kong, 1924-27.
Formerly Scholar in Law of Gonville and Caius College,
Cambridge, and Bacon Scholar of Gray's Inn

VOLUME II

LONGMANS, GREEN AND CO.
LONDON ♦ NEW YORK ♦ TORONTO

1928

Made in Great Britain

UNIVERSITY OF CHICAGO
STATE LIBRARY

CONTENTS

VOLUME II

| CHAPTER | PAGE |
|--|------|
| IX. THE CHINESE LEGAL REFORM MOVEMENT AND MODERN CHINESE LAW | I |
| I. The Reform Movement—II. The Chinese Constitution—III. The New Chinese Codes—IV. The Modern Judicial System of China—V. Modern Chinese Prisons—VI. The Enforcement of Chinese Law. | |
| X. THE NATURE AND EXTENT OF EXTRATERRITORIAL JURISDICTION IN CHINA | 76 |
| I. Provision for Extraterritorial Jurisdiction by Treaty Powers—II. The British Consular Court at Kashgar—III. Nature of Extraterritorial Jurisdiction in China considered generally—IV. The Scope of British Extraterritorial Jurisdiction in China—V. The Law applied in American Consular Courts in China—VI. Protection of Industrial Property in China—VII. The Opium Question and Extraterritoriality—VIII. Extraterritoriality in Time of War—IX. Defects of the Existing System of Extraterritorial Jurisdiction in China. | |
| XI. EXTRATERRITORIALITY IN GENERAL HISTORICALLY CONSIDERED | 155 |
| I. The Ancient World—II. The Mediaeval System—III. The Capitulations—IV. Extraterritoriality in the Far East—V. Termination of Extraterritorial Jurisdiction. | |

APPENDICES

| APPENDIX | |
|--|-----|
| I. TRIAL OF A FRENCHMAN | 173 |
| II. THE <i>Lady Hughes</i> AFFAIR, FROM A CONTEMPORARY AMERICAN SOURCE | 174 |
| III. NOTE RELATIVE TO THE SUSPENSION OF THE TRADE OF THE EAST INDIA COMPANY AT CANTON, IN 1807 | 175 |

Q 19182
Barr

| | |
|---|-----|
| IV. THE TERRANOVA AFFAIR, FROM A CONTEMPORARY AMERICAN SOURCE | 183 |
| V. STAUNTON'S "REMARKS ON A RECENT DISPUTE BETWEEN THE AMERICANS AND THE CHINESE" | 189 |
| VI. THE TRIAL OF THE PIRATES OF THE <i>Navigateur</i> IN 1829 | 201 |
| VII. THE CASE OF MR. KEATING, 1835 | 212 |
| VIII. THE AFFRAY OF 1837 | 223 |
| IX. TRANSLATION OF A CHINESE DESPATCH SENT TO RUSSIA, THE 21ST JANUARY, 1729 | 225 |
| X. A CONTEMPORARY VIEW OF EXISTING ABUSES IN CHINESE LEGAL PROCEDURE | 228 |
| XI. WILFUL MURDER IN CHINESE LAW | 250 |
| XII. THE DEATH OF THOMAS BEALE (1841) | 251 |
| XIII. THE LAW OF HOMICIDE IN OPERATION | 252 |
| XIV. THE TRIAL OF KESHEN | 254 |
| XV. THE TRIAL OF ILIPU | 257 |
| XVI. THE TRIAL OF QUAY-LUNG | 260 |
| XVII. EXAMPLES OF THE DOCTRINE OF RESPONSIBILITY | 265 |
| XVIII. THE DOCTRINE OF RESPONSIBILITY AND CHINA'S POLITICAL DECADENCE | 267 |
| XIX. CHINESE PRISONS—A CHINESE DESCRIPTION | 268 |
| XX. THE THREE ORDERS IN COUNCIL, 1833 | 271 |
| XXI. EXTRATERRITORIAL PROVISIONS OF THE TREATY OF WANGHIA, 1844 | 277 |
| XXII. EXTRATERRITORIAL PROVISIONS OF THE TREATY OF WHAMPOA, 1844 | 281 |
| XXIII. JURISDICTION ORDER IN COUNCIL, 1843 | 285 |
| XXIV. THE INTERNATIONAL STATUS OF MACAO BEFORE 1887 | 287 |
| XXV. THE LAW APPLICABLE TO REAL PROPERTY IN BRITISH COURTS IN CHINA | 295 |
| XXVI. THE STATUS OF BRITISH SUBJECTS IN THE SERVICE OF THE CHINESE GOVERNMENT | 298 |

CONTENTS

vii

APPENDIX

PAGE

| | |
|--|-----|
| XXVII. PROPOSALS FOR A COURT OF APPEAL . | 304 |
| XXVIII. EXTRATERRITORIAL PROVISIONS OF THE TREATY OF CANTON, CONCLUDED BY SWEDEN AND NORWAY WITH CHINA, MARCH 20, 1847 . | 308 |
| XXIX. SIR JOHN BOWRING'S ATTITUDE TO THE LORCHA <i>Arrow</i> | 310 |
| XXX. EXTRATERRITORIAL PROVISIONS OF THE BRITISH TREATY OF TIENTSIN, JUNE 26, 1858. . | 312 |
| XXXI. EXTRATERRITORIAL PROVISIONS OF THE FRENCH TREATY OF TIENTSIN, JUNE 27, 1858. . | 314 |
| XXXII. EXTRATERRITORIAL PROVISIONS OF THE AMERICAN TREATY OF TIENTSIN, JUNE 18, 1858. . | 317 |
| XXXIII. RUSSIAN TREATIES WITH CHINA, GUARANTEEING EXTRATERRITORIAL RIGHTS | 319 |
| XXXIV. EXTRATERRITORIAL PROVISIONS OF THE GERMAN TREATY OF TIENTSIN, 1861 | 322 |
| XXXV. EXTRATERRITORIAL PROVISIONS OF THE DANISH TREATY OF TIENTSIN, 1863 | 324 |
| XXXVI. EXTRATERRITORIAL PROVISIONS OF THE DUTCH TREATY OF TIENTSIN, 1863 | 326 |
| XXXVII. EXTRATERRITORIAL PROVISIONS OF THE SPANISH TREATY OF TIENTSIN, 1864 | 327 |
| XXXVIII. EXTRATERRITORIAL PROVISIONS OF THE BELGIAN TREATY OF TIENTSIN, 1865 | 328 |
| XXXIX. EXTRATERRITORIAL PROVISIONS OF THE ITALIAN TREATY OF PEKING, 1866 | 330 |
| XL. EXTRATERRITORIAL PROVISIONS OF THE AUSTRO- HUNGARIAN TREATY OF PEKING, 1869 . | 332 |
| XLI. EXTRATERRITORIAL PROVISIONS OF JAPANESE TREATIES WITH CHINA | 334 |
| XLII. EXTRATERRITORIAL PROVISIONS OF KOREAN TREATIES WITH CHINA | 339 |
| XLIII. EXTRATERRITORIAL PROVISIONS OF THE TREATY OF TIENTSIN BETWEEN CHINA AND PERU, 1874 | 343 |
| XLIV. EXTRATERRITORIAL PROVISIONS OF THE TREATY OF TIENTSIN BETWEEN CHINA AND BRAZIL, 1881 | 344 |

| | |
|---|-----|
| XLV. EXTRATERRITORIAL PROVISIONS OF THE TREATY OF PEKING BETWEEN PORTUGAL AND CHINA, 1887 | 346 |
| XLVI. TREATY BETWEEN CHINA AND THE CONGO FREE STATE, 1898 | 348 |
| XLVII. EXTRATERRITORIAL PROVISIONS OF THE TREATY OF WASHINGTON BETWEEN MEXICO AND CHINA, 1899 | 349 |
| XLVIII. EXTRATERRITORIAL PROVISIONS OF THE TREATY OF PEKING BETWEEN SWEDEN AND CHINA, 1908 | 350 |
| XLIX. DECLARATION ATTACHED TO THE SWISS TREATY WITH CHINA, 1918 | 352 |
| L. EXTRACT FROM THE RUSSIAN <i>Bulletin des Lois</i> OF AUGUST 30—SEPTEMBER 1, 1899 | 352 |
| LI. JURISDICTION IN THE CHINESE EASTERN RAIL- WAY ZONE | 353 |
| LII. OTHER BRITISH TREATIES GUARANTEEING EXTRA- TERRITORIAL RIGHTS IN CHINA | 356 |
| LIII. OTHER AMERICAN TREATIES, ETC., GUARANTEEING EXTRATERRITORIAL RIGHTS IN CHINA | 359 |
| LIV. OTHER TREATIES GUARANTEEING FRENCH EXTRA- TERRITORIAL RIGHTS IN CHINA | 362 |
| LV. BRITISH GAOLS AT TIENTSIN AND CHEFOO, 1868-69 | 362 |
| LVI. ABSENCE OF A COMMERCIAL CODE IN CHINA | 364 |
| LVII. THE MIXED COURT, JULY 1, 1867—JUNE 30, 1868 | 375 |
| LVIII. RULES OF PROCEDURE OF THE COURT OF CONSULS, SHANGHAI | 377 |
| LIX. RECENT LEGISLATION OF THE SOUTHERN NATIONALIST GOVERNMENT | 379 |
| LX. UNITED STATES REVISED STATUTES RELATING TO CONSULAR JURISDICTION IN CHINA | 388 |
| LXI. ACT ESTABLISHING THE UNITED STATES COURT FOR CHINA | 394 |
| BIBLIOGRAPHY | 399 |

THE DEVELOPMENT OF EXTRATERRITORIALITY IN CHINA

CHAPTER IX

THE CHINESE LEGAL REFORM MOVEMENT AND MODERN CHINESE LAW

AUTHORITIES

Report of the Extraterritoriality Commission, 1926. The Provisional Criminal Code of China (Peking, 1923). The Regulations Relating to the Criminal Procedure of China (Peking, 1923). Chinese Prisons (Peking, 1923). The Chinese Supreme Court Decisions (Peking, 1923). The Regulations Relating to the Civil Procedure of China (Peking, 1923). Laws, etc., Relating to the Judicial Administration of China (Peking, 1923). Laws, etc., Relating to Traders and Commerce (Peking, 1922). The Trade Mark Law (Peking, 1923). Constitution, etc., of China (Peking, 1924). Morse, International Relations of the Chinese Empire, Vol. III. The Chinese Social and Political Science Review, Vols. I-XI. China Year Book, 1920-27. The Hong Kong Telegraph, 1924-27. Kotenev, Shanghai: its Mixed Court and Council. China Weekly Review, 1926. Memorandum No. 13 of the Tientsin Chamber of Commerce. North China Herald, 1924-28. South China Morning Post, 1924-28. The Times, 1926-8. The Hong Kong Daily Press, 1924-28. Report of the Hong Kong General Chamber of Commerce, 1925. Peking and Tientsin Times, 1924

I. THE REFORM MOVEMENT

It has already been noticed that a number of problems connected with extraterritoriality in China proved insoluble as late as 1880, in consequence of the steady refusal of the Chinese Government to admit the necessity of undertaking a complete reorganisation of the Chinese legal system. Towards the end of

the century, however, a fundamental change of attitude was made. A recognition of the need for national reorganisation along Western lines slowly spread, and the desire for immediate reform became general. There were many political reasons for this change of attitude ; but as far as law reform was concerned, the Chinese were greatly impressed by the fact that Japan had just successfully undertaken a similar reorganisation, with the result that all foreign extraterritorial rights in Japan were abolished before the close of the century. Moreover, by Article XII of the Commercial Treaty made with China on September 5, 1902, Great Britain made the following promise :

“ China having expressed a strong desire to reform her judicial system and to bring it into accord with that of Western nations Great Britain agrees to give every assistance to such reform and she will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the arrangement of their administration, and other considerations warrant her so doing.”

The United States made a similar promise by Article XV of the treaty of October 8, 1903, and Japan also agreed on the same day to do the same. In the treaty between Sweden and China, signed July 2, 1908, Article X states :

“ However, as China is now engaged in reforming her judicial system it is hereby agreed that as soon as all other treaty Powers have agreed to relinquish their extraterritorial privileges, Sweden will also be prepared to do so.”

A similar clause appears in the Swiss treaty of 1918, and Mexico, in an exchange of notes with China on September 26, 1921, promised to renounce consular jurisdiction in China when the treaty of 1899 was revised.

The actual process of law reform began soon after the opening of the century. A Commission was appointed to prepare a number of draft codes—civil, criminal, commercial, and procedural. With the Commission were associated Japanese experts, with the result that the primary influence upon the codes so prepared was Japanese. As the Japanese Codes were in turn based upon modern Continental Codes—more especially the German and the French—the new Chinese Codes form a further link in the lengthening chain of legal systems derived ultimately

from the Roman. There was considerable wisdom in the appointment of Japanese experts, since Japan had recently solved the difficult problem of adapting Western legal principles to Eastern requirements. Draft codes were prepared, and in 1907 the "Provisional Regulations of the High Courts and the Subordinate Courts" appeared. Two years later the "Law of the Organisation of the Judiciary" and the Criminal Code were promulgated. The new codes encountered a good deal of opposition. They introduced many sweeping reforms. Thus, the old law declared that no person accused of crime could be punished until he had confessed. As a natural result, corporal punishment and torture were freely used to extort confessions. Both were now abolished, and modern methods of trial instituted. Moreover, the cangue as a method of punishment was replaced by a fine. At the same time, however, the fusion between the native and the foreign elements in the codes was not by any means complete, and the disappearance of the family as a legal unit, with its rights, duties, and responsibilities, proved a serious stumbling-block to general acceptance.

The Revolution seriously interfered with the work of law reform, although the Commission continued its labours. The regulations relating to it were twice amended, and it was renamed "The Revised Law Codification Commission," including within its membership such well-known jurists as Dr. C. H. Wang, Mr. Tung-K'ang, Mr. Lo Wen-Kan, and M. Padoux (formerly legal adviser to the Siamese Government) as foreign adviser. A revision of the Criminal Code was approved in 1914, and a further revision was undertaken and completed in 1919. To quote the Report of the Extraterritoriality Commission :

"The principal work of the commission has been to investigate, in collaboration with the Ministry of Justice, local customs and usages, and in the light of the results thus obtained to revise and draft codes prepared under the former Government. As the work is very extensive in its scope and further complicated by the difficulty of reconciling century-old Chinese customs with the principles of foreign law, the commission has been engaged upon it, with the aid of the French and Japanese advisers, since the third year of the republic (1914). All the codes and some of the laws, ordinances and regulations in force in the Chinese Courts are the work of this commission, as well as a number of draft codes and laws which have not yet been promulgated."¹

¹ Pp. 26-27.

The trouble with regard to these codes, however, is that in many Chinese courts they are disregarded altogether, and moreover, since they have not been adopted by Parliament (owing to incessant political upheavals), the codes themselves represent little more, technically, than the aspirations of a few of China's most enlightened statesmen.

At the Peace Conference in 1919 China presented a reasoned claim for readjustment of certain questions, one of them being the question of extraterritoriality. After recalling the declarations of Great Britain in 1902, and of the United States in 1903, it proceeds to examine whether Chinese law and its administration have progressed sufficiently to warrant the relinquishment of extraterritorial rights. It declares :

“While we do not claim that the Chinese laws and their administration have now reached such a state as has been attained by the most advanced nations, we do feel confident to assert that China has made very considerable progress in the administration of justice and in all matters pertaining thereto since the signing of the above mentioned Commercial Treaties.”

As evidence of this the delegates put forward the following circumstances :

1. China has adopted a modern Constitution, separating the judiciary from the executive and the legislature, and guaranteeing to the citizens the fundamental rights of life and property.

2. China has prepared five codes—the Criminal, Civil, and Commercial Codes, and the Codes of Civil and Criminal Procedure. Of these, the Provisional Criminal Code and a portion of the Law of Procedure are provisionally in force. Some of the others are “duly promulgated.”

3. Three new grades of courts—District Courts, High Courts, and the Supreme Court in Peking—have been established, together with a system of procurators.

4. Legal procedure has been improved. Civil and criminal law have been separated; trials are public, and corporal punishment to enforce confession is abolished. Properly qualified counsel practise in the courts.

5. The judicial officers receive regular legal training.

6. The prison and police systems have been reformed. The

next portion of the memorandum recites certain defects of extra-territorial jurisdiction in China. These are :

1. That there is a great diversity of the laws to be applied. Different decisions may be given on the same facts by the Consular Courts of different nationalities.

2. There is no effective control of witnesses or plaintiffs of another nationality. Neither can be punished for perjury nor committed for contempt of court. Moreover, the court cannot enter a counter-claim against a plaintiff of another nationality.

3. The difficulty of obtaining evidence when a foreigner commits a crime in the interior is very great. He must be tried by the nearest Consul, who may be thousands of miles away, and to whom all evidence must be transmitted.

4. The consular and judicial functions of any particular Consul conflict.

The Chinese delegation therefore asked for a complete abolition of extraterritoriality on the following conditions :

1. The promulgation of the prepared codes.

2. The establishment of new courts in all the districts where foreigners reside.

These conditions China undertook to fulfil by the end of 1924. The delegation, however, also asked for certain immediate modifications, which have already been set forth, in the discussion of the International Mixed Court at Shanghai.

These requests were not accepted, and China therefore did not sign the Treaty of Versailles. The question of extraterritoriality, however, was reserved for discussion at the Washington Conference in 1922. At this Conference, Dr. Wang Chung-hui, spokesman of the Chinese delegation, elaborated the arguments for the abolition of extraterritoriality which had been put forward in 1919, and after discussion, the following resolution was unanimously adopted :

“The representatives of the Powers hereinafter named participating in the discussion of Pacific and Far Eastern questions in the Conference on the limitation of Armament—to wit, the United States of America, Belgium, the British Empire, France, Italy, Japan, the Netherlands, and Portugal,

“Having taken note of the fact that in the Treaty between Great Britain and China dated September 5, 1902, in the Treaty between

The United States of America and China dated October 8, 1903, and in the Treaty between Japan and China dated October 8, 1903, These several Powers have agreed to give every assistance towards the attainment by the Chinese Government of its expressed desire to reform its judicial system and to bring it into accord with that of Western nations, and have declared that they are also prepared to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration and other considerations warrant them in so doing :

“ Being sympathetically disposed towards furthering in this regard the aspiration to which the Chinese Delegation gave expression on November 16, 1921, to the effect that, immediately, or as soon as circumstances will permit, existing limitations upon China’s political, jurisdictional and administrative freedom of action are to be removed ;

“ Considering that any determination in regard to such actions as might be appropriate to this end must depend upon the ascertainment and appreciation of complicated states of fact in regard to the laws and the judicial system and the method of judicial administration of China, which this Conference is not in a position to determine ;

“ Have resolved—

“ That the Governments of the Powers above named shall establish a commission (to which each of such Governments shall appoint one member) to inquire into the present practice of extraterritoriality in China, and into the laws and judicial system and the methods of judicial administration of China, with a view to reporting to the Governments of the several Powers above named their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China, and to assist and further the efforts of the Chinese Government to effect such legislative and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality.”

It was also decided that the Commission should be constituted within three months of the adjournment of the Conference, and that it should present its report within a year of its first meeting. The Powers were free to reject all or any portion of the report, but in no case should the acceptance be made dependent upon the granting of any type of concession by China. Non-signatory Powers with extraterritorial rights in China were invited to adhere,¹ whilst in a separate resolution China expressed her appreciation of the attitude of the Powers, and promised to afford every facility to the Commission.

¹ Denmark, Peru, Spain, and Sweden did so, and were therefore represented on the Commission.

Unfortunately the Commission did not hold its first meeting until January 1926. For the initial delay China was responsible, as she wished to allow her Law Codification Commission sufficient time to complete its translation of the new codes.¹ After May 1923, however, China was ready to receive the Commission, and responsibility for the further delay must accordingly rest principally with France, whose consent to move as far as the meeting of the Commission was concerned was made to depend upon the settlement of the "Gold Franc" controversy—a matter entirely unconnected with extraterritoriality. Meanwhile, in 1925, China had suffered from another wave of anti-foreignism, primarily the result of Bolshevist propaganda, working upon the impressionable minds of China's foreign-trained students. The ensuing riots in the coast ports and Peking demonstrated afresh the impatience of certain sections of the Chinese to see the extraterritoriality treaties revised. The Note which the Powers presented to China as a result of these incidents reiterated the sympathy of the Powers towards China's difficulties, maintained the conclusions reached at the Washington Conference, and pointed out that it was greatly to be regretted that the Chinese Government during the past few years had been unable to establish its authority. Nevertheless, it recommended that the Commission should begin its work at an early date, and concluded by observing that the Commission's report "will serve as a basis for the recommendations to be made in pursuance of the resolution for the purpose of enabling the Governments concerned to consider what, if any, steps may be taken with a view to the relinquishment of extraterritorial rights."

The first meeting of the Commission was fixed for December 18, 1925, but the interruption of the railway service in consequence of the civil war prevented the arrival of some of the Commissioners. The opening session was therefore held on January 12, 1926. The last session was held on September 16, 1926. Several parts of China were inaccessible owing to disturbed political conditions, and no survey of conditions in Provinces under the control of the Canton Government was possible, owing to the refusal of that Government to receive the Commission in consequence of its contention that the initiative to

¹ These now exist in English, and are published by the Chinese Commission on Extraterritoriality.

revise the treaties rested exclusively with China. The report on existing conditions is considered later in the chapter. The recommendations of the Commission were as follows :

I. The administration of justice with respect to the civilian population in China must be entrusted to a judiciary which shall be effectively protected against any unwarranted interference by the executive or other branches of the Government, whether civil or military.

II. The Chinese Government should adopt the following programme for the improvement of the existing legal judicial and prison systems of China :

1. It should consider Parts II and III of this report relating to the laws and the judicial, police and prison systems, with a view to making such amendments and taking such action as may be necessary to meet the observations there made.

2. It should complete and put into force the following laws :—

- (1) Civil Code.
- (2) Commercial Code (including Negotiable Instruments Law, Maritime Law and Insurance Law).
- (3) Revised Criminal Code.
- (4) Banking Law.
- (5) Bankruptcy Law.
- (6) Patent Law.
- (7) Land Expropriation Law.
- (8) Law concerning Notaries Public.

3. It should establish and maintain a uniform system for the regular enactment, promulgation and rescission of laws so that there may be no uncertainty as to the laws of China.

4. It should extend the system of modern Courts, modern prisons and modern detention houses with a view to the elimination of the magistrates' Courts and of the old-style prisons and detention houses.

5. It should make adequate financial provision for the maintenance of courts, detention houses and prisons and their personnel.

III. It is suggested that, prior to the reasonable compliance with all the recommendations above mentioned, but after the principal items thereof have been carried out, the Powers concerned, if so desired by the Chinese Government, might consider the abolition of extraterritoriality according to such progressive scheme (whether geographical, partial, or otherwise) as may be agreed upon.

IV. Pending the abolition of extraterritoriality, the Governments of the Powers concerned should consider Part I of this report with a view to meeting the observations there made and, with the co-operation of the Chinese Government wherever necessary, should make certain modifications in the existing systems and practice of extraterritoriality as follows :—

1. *Application of Chinese Laws.*

The Powers concerned should administer, so far as practicable, in their extraterritorial or consular courts, such laws and regulations of China as they may deem it proper to adopt.

2. *Mixed Cases and Mixed Courts.*

As a general rule mixed cases between nationals of the Powers concerned as plaintiffs and persons under Chinese jurisdiction as defendants should be tried before the modern Chinese Courts (Shen Pan Ting) without the presence of a foreign assessor to watch the proceedings or otherwise participate. With regard to the existing special mixed courts, their organisation and procedure should, as far as the special conditions of the settlements and concessions warrant, be brought more into accord with the Chinese judicial system. Lawyers who are nationals of extraterritorial Powers and who are qualified to appear before the extraterritorial or consular courts should be permitted, subject to the laws and regulations governing Chinese lawyers, to represent clients, foreign or Chinese, in all mixed cases. No examination should be required as a qualification for practice in such cases.

3. *Nationals of Extraterritorial Powers.*

(a) The extraterritorial Powers should correct certain abuses which have arisen through the extension of foreign protection to Chinese as well as to business and shipping interests the actual ownership of which is wholly or mainly Chinese.

(b) The extraterritorial Powers which do not now require compulsory periodical registration of their nationals in China should make provision for their registration at definite intervals.

4. *Judicial Assistance.*

Necessary arrangements should be made in regard to judicial assistance (including *commissions rogatoires*) between the Chinese authorities and the authorities of the extraterritorial Powers themselves, *e.g.* :—

(a) All agreements between foreigners and persons under Chinese jurisdiction which provide for the settlement of civil matters by arbitration should be recognised, and the awards made in pursuance thereof should be enforced, by the extraterritorial or consular courts in the case of persons under their jurisdiction and by the Chinese courts in the case of persons under their jurisdiction, except when, in the opinion of the competent court, the decision is contrary to public order or good morals.

(b) Satisfactory arrangements should be made between the Chinese Government and the Powers concerned for the prompt execution of judgments, summonses, and warrants of arrest or search concerning persons under Chinese jurisdiction, duly issued by the Chinese Courts and certified by the competent Chinese authorities and *vice versa*.

5. *Taxation.*

Pending the abolition of extraterritoriality, the nationals of the Powers concerned should be required to pay such taxes as may be prescribed in laws and regulations duly promulgated by the competent authorities of the Chinese Government and recognised by the Powers concerned as applicable to their nationals.¹

There can be no question that the Report fell short of what Chinese opinion had expected, and the Chinese representative, Dr. Wang Chung-hui, in signing, added: "By signing this report my approval of all the statements contained in Parts one, two and three is not implied."²

The Report, as has been stated, does not include in its survey any account of the state of affairs in those parts of China which are under the control of the Southern Government originating in Canton. It is therefore necessary to say a little of conditions there. Even more than the North, the Southern Provinces have suffered from innumerable local wars, caused by endless separatist movements. Systematic law reform has therefore been impossible; nevertheless, something has been attempted. Early in 1927 the General Political Department at Canton submitted to the Nationalist Government, whose headquarters were then at Wuhan, a comprehensive scheme for the reform of prisons in Kwangtung, resulting from a thorough investigation of prevailing conditions. The document is of exceptional interest, as it illustrates how little Cantonese prisons had changed in the course of a century. One of the most serious abuses, it states, is the practice of detaining persons arrested for long periods—sometimes between three and five years—in prison before bringing them to trial. Sometimes the persons so detained are not even notified of the offence with which they are charged. The Department therefore proposes to make stringent regulations, providing for an immediate trial. Gaols are overcrowded, and the prisoners are underfed, ten cents per day per prisoner being the allowance, and out of this gaolers are in the habit of taking illegally a considerable portion. The Department proposes, as a remedy, an immediate increase to fifteen or twenty cents a day, and the appointment of special officers to prevent the "squeezing" of prisoners, offending gaolers being severely punished. Ill-

¹ *Report*, pp. 94-96.

² These sections contain accounts of the modern Chinese judicial system.

treatment, both by gaolers and by old prisoners, is also common, and there is no separation between serious criminals and petty offenders. Moreover, when families of prisoners make gifts for additional food, this, too, is extorted from prisoners, who are also compelled to pay excessive prices for small comforts. Ventilation of the prisons is bad, windows being insufficient. Sanitary arrangements are deplorable, and the prisons are usually very damp. The result is much avoidable illness. Prisoners are inadequately clothed, and their correspondence is interfered with and frequently suppressed by gaolers. The Department proposes to alter all these conditions, appoint prison doctors, cover the floors of the gaols with a two-inch layer of cement to relieve the dampness, and provide wooden beds to prevent dampness and vermin. Finally, it suggests the establishment of vocational training, a little political education (on party lines), and the construction of new prisons.¹ It is impossible to say whether these recommendations have been put into force.

As far as law reform is concerned, the Nationalist Government has adopted the Provisional Criminal and Civil Codes of the Republic, with certain minor modifications, in order to bring them into harmony with "the Party spirit and the spirit of Revolution." The Commercial Law and Law of Companies, the Law of Criminal Procedure and the Law of Civil Procedure have been adopted in their entirety. The organisation of the judiciary has been completely altered, however, to make the judiciary completely subordinate to the political activities of the Nationalist Government—a process showing ample signs of extremist influence. Moreover, the Southern Government has also enacted a Labour Union Statute, conferring important privileges upon such unions, which in China are mainly organised for political activity.²

II. THE CHINESE CONSTITUTION

An analysis of the present state of Chinese law divides itself naturally into two parts—first, a discussion of what has been attempted ; and secondly, a consideration of what actually exists.

¹ Reported in the *Hong Kong Telegraph* (from the *Canton Gazette*) on January 8, 1927.

² The text of these laws is reprinted in Appendix LIX. For the Chinese version I am indebted to Mr. Y. C. Peng, of the Canton Foreign Office. For the English translation I am indebted to Mr. Lo Tung Fan, B.A., late of Hong Kong University.

The following sections will therefore attempt to give some impression of both. It is necessary to give some account of the Constitution first, since ultimately the validity of all Chinese recent legal changes will depend upon approval by the supreme legislature, when that has been formally brought into existence.

The constitutional reform movement in China was initiated by the Emperor, Kuang Hsu, and a small group of enthusiasts.¹ For some years the need of radical alteration to fit the times had been manifest. Between June 11, therefore, and September 16, 1898, a perfect avalanche of reforming edicts appeared. The movement, however, was brought to a sudden end when the Emperor tried to imprison his aunt, the famous Empress Dowager, whom he rightly regarded as the principal obstacle to progress. Learning of the plot, she acted with energy, and succeeded in imprisoning the Emperor himself. Then followed a period of reaction, culminating in the Boxer Rebellion. Immediately afterwards, between 1901 and 1905, a number of important reforms were effected. In 1905 a Commission was sent to Europe and the United States to study constitutional methods; when it returned in the following year, the work of political reorganisation was accelerated, and in 1907 an Imperial edict authorised the establishment of a National Consultative Council and of Provincial Assemblies. A year later a Nine Years Programme of Constitutional Preparation was published in another edict. The deaths of the Emperor and of the Empress Dowager in November 1909 gave rise to the fear that the process of reform would be interrupted. The issue of reforming edicts continued, nevertheless, and the Consultative Council at last met on October 3, 1910. One of the first acts of this Council was to reduce the Nine Years Programme to six years, and it also advocated and succeeded in obtaining the creation of an Imperial Cabinet. In spite of what had been accomplished, however, and the imminence of further reforms, the Revolution, when it broke out in 1911, rapidly spread, and after sweeping away the monarchy, the nation started to build the constitution afresh. With occasional interruptions it has been doing that ever since. A National Convention assembled at Nanking, though in its early stages it was national in name only, being controlled by the military leaders of various provinces.

¹ For a full account of it see Morse, *International Relations*, vol. iii. chap. vi.

It is impossible and unnecessary to trace here the process of constitution-making in China in detail. The Convention was transferred, with additions to its numbers, to Peking, and became a Provisional National Assembly. It issued a Provisional Constitution, which was promulgated by a mandate of President Yuan Shih-kai on March 15, 1912. Its scope is excellently summarised by the Extraterritoriality Commission :

“ It was termed ‘ provisional,’ because a permanent Constitution was contemplated and provided for in article 54 thereof. This Constitution (Chapter II, articles 5 to 15 inclusive) defines the rights to which Chinese citizens are entitled, and the duties which they owe towards their Government. The general nature of these provisions is similar to that of the Constitutions of other Powers and includes the usual safeguards regarding immunity of persons and property from arrest and seizure otherwise than in accordance with due process of law. Chapter III, article 19, sub-section (a), provides for the enactment of laws by the National Assembly, and Chapter IV, article 30, provides for the promulgation of the laws so enacted by presidential proclamation, while article 31 authorises the President to promulgate such orders as he may be authorised to make by law. Articles 51 and 52 of this Constitution provide for the independence of the judiciary and its immunity from outside interference. To sum up, the Provisional Constitution provided for the inalienable rights and duties of Chinese citizens, for the enactment of law by Parliament, for the promulgation of laws by the executive, and, finally, for the independence of the judiciary.”¹

In December 1912 and January 1913 the first Chinese Parliament was elected. It immediately appointed a Commission to prepare a permanent constitution, and a draft constitution was submitted to Parliament in November 1913. During the same year a rebellion broke out in the Lower Yangtse valley, and President Yuan Shih-kai, suspecting that a number of Kuomintang delegates were indirectly involved in it, dissolved the Kuomintang, thus reducing the Parliament to a “ Rump.” On January 11, 1914, the President took the further step of dissolving Parliament altogether. On May 1 the Constitutional Compact, which was not enacted by Parliament (since it no longer existed), was proclaimed by the President. The Compact contains very much the same type of provisions as the Provisional Constitution, except that the President is given powers to issue emergency ordinances in the public interest. These, however, require the

¹ *Report*, pp. 27-28.

ratification of Parliament at its next session.¹ The Compact ceased to be in force on the death of the President (who had unsuccessfully attempted to establish himself as Emperor) in June 1916. He was succeeded by Li Yuan-hung, who reconvened Parliament in 1916 and dismissed it in 1917. It reassembled once more in 1922. Meanwhile, a second Parliament, elected by a different process under Election Laws introduced by the Special Administrative Council of President Feng Kuo-Chang, claimed to be the true representatives of the Chinese nation, although without success. A fresh document, declared to be the Permanent Constitution of China, was adopted by the original Parliament on October 10, 1923. This document was published by the Chinese Commission on Extraterritoriality and submitted for the consideration of the Extraterritoriality Commission. A consideration of its principal features will therefore be profitable.

The form of Government is to be for ever republican, and sovereignty is considered to be vested in the people as a whole. The fundamental rights of Chinese citizens, including equality before the law, freedom from arrest and imprisonment except in accordance with the law, immunity of citizens' houses from unlawful entry and search, secrecy of correspondence, freedom of residence, occupation, and religion, and freedom of association, of speech, and of publication, and the adequate protection of proprietary rights are guaranteed by Chapter IV of the Constitution. All citizens, moreover, possess the franchise and the right to be elected, together with the duty to receive elementary education. The following chapter specifies the powers of the National Government, together with those appropriate to the Provincial Governments and their subordinate districts. Article 26 deals with unspecified powers, and provides for a usage different both from that prevailing in the United States (where unspecified powers belong to the State Governments) and from that of Canada (where such powers belong to the Central Government). The Chinese Constitution declares : " Where any matter not specified in Articles 23, 24, and 25 arises, it shall be a matter of the Republic if by its nature it concern the Republic, and of a Province if by its nature it concern a Province. Any controversy arising in this connection shall be decided by the highest Court of Justice." To the Supreme Court also the power of interpreting and

¹ *Report*, p. 28.

invalidating national and provincial laws *ultra vires* is conceded, but controversies between Provinces are to be decided by the Senate. Compulsory military service is imposed by Article 32, and in peace-time the military expenditure must not exceed one-quarter of the total national expenditure—a liberal allowance. Provinces are not allowed to conclude political alliances or retain standing armies.

Parliament comprises a Senate, elected by the highest local assemblies and other legally constituted electoral bodies, and a House of Representatives, elected by districts on a population basis. No member of either House may hold civil or military office. Senators are elected for six years—one-third retiring every two years—Representatives for three years. Half the members of either House must be present before deliberations can begin. The House of Representatives may impeach a President or a Minister before the Senate, but his punishment is decided by the Supreme Court.

“The executive power of the Republic of China shall be exercised by the President with the assistance of the Cabinet Ministers.” The President is elected by an Electoral College, composed of all the members of Parliament. The Vice-President is elected at the same time, and succeeds to the Presidency if the office becomes vacant before the expiry of the normal period of five years. The President appoints and dismisses civil and military officials ; he is commander-in-chief of the army ; foreign ambassadors are accredited to him ; he declares war and concludes treaties. Generally speaking, his position corresponds with that of the President of the United States. At the same time, his freedom of action is limited by a Cabinet, which is appointed with the approval of the House of Representatives, and which is responsible to it. Obviously, the position of such a Cabinet in the frame of Government depends largely on the personalities of the President and the Premier, coupled with the extent to which popular approbation or disapproval can be made effective through parliamentary institutions. A defect of the Constitution is that, while the powers of the Supreme Court with regard to the validity of laws are clearly implied in earlier parts of the document, the chapter on the Judiciary fails to deal with the constitution and powers of the Supreme Court beyond specifying that its President shall be appointed with the approval of the

Senate. Public administration of justice is provided for, however, free from all external interference, and Article 102 provides :

“ A judicial official shall not, during his tenure of office, be subjected to a reduction of salary, suspension from office or transference to another office otherwise than in accordance with law. A judicial official shall not, during his tenure of office, be removed from his office unless he has been convicted of a crime or subjected to disciplinary punishment; provided that these provisions shall not apply in a case of an alteration in the organisation of the judiciary or of the qualification of entry thereto. The disciplinary punishment of judicial officials shall be prescribed by law.”

As far as legislation is concerned, the President may ask Parliament to reconsider a Bill, but if they present it to him again, he must accept it. The President promulgates all laws after enactment by Parliament. Financial measures must originate in the House of Representatives. Local government receives a separate chapter. Each province has a unicameral Representative Assembly, and a Provincial Assembly Council. Below the Provincial Assembly is the District Assembly. The district has a District Council and a magistrate. Both the province and the district are taxing bodies. The procedure by which the Constitution is amended is a little complicated. Not less than one-fourth of the members of either House may present a motion. If it is adopted by a two-thirds majority of the members of each House, a Constitution Conference, composed of the members of both Houses, shall be called. It may not deliberate unless two-thirds of the total members are present and its decisions must be accepted by three-fourths of those present. The republican form of government may not be changed at all. Surveying the Constitution as a whole, the impression gained is that the framers of this Constitution started by taking that of the United States as a model, and then found it necessary to work out the idea differently to suit the special conditions prevailing in China.

Owing to the internal disturbances, a Provisional Government was set up at Peking in November 1924 under a provisional “ Chief Executive,” all constitutional forms being temporarily in abeyance. On November 24 a mandate of the Chief Executive declared :

“ The institution of the Provisional Government of the Republic of China at this time has for its object the reorganisation of government

on new lines and the initiation of a general change, with the co-operation of the people. The task is of great magnitude and questions of every sort are awaiting joint solution by all concerned. All former executive and judicial laws and orders shall continue in effect in so far as they are not incompatible with the organisation of the Provisional Government or may not have been cancelled by official orders.”¹

A mandate of April 24, 1925, authorised the assembly of delegates for the making of a new Constitution. Rules of Procedure for its preparation were adopted on May 3, and the draft of 168 Articles was completed on October 23. The principal difference between this and earlier constitutions resides in the fact that the structure of government is more definitely federal than in the earlier ones.² On April 10, 1926, the Provisional Government ceased to exist, and with it perished the latest Constitution. Northern China was afterwards frankly ruled by a military dictatorship. In the South, after a bewildering medley of constitutional experiments, disintegration and the rule of local military leaders in the various provinces for some time prevailed. What form of Constitution will follow the Nationalist occupation of Peking it is impossible to predict. It should be clearly understood that no serious attempt has ever been made to put one of these constitutions into general operation. Of the resulting position, the Report of the Extraterritoriality Commission observes :

“Of all the laws presented to the Commission as the laws applied in the Chinese Courts, few, so far as the Commission is aware, were ever enacted or confirmed by Parliament. These laws have as their basis mandates of the President or orders of the Minister of Justice, neither of whom has, strictly speaking, any legal or constitutional authority to make laws except . . . that President Yuan Shih-Kai was authorised under the Constitutional Compact to promulgate emergency orders to be confirmed by Parliament. Although Chinese laws thus rest on presidential mandates and ministerial orders, they are, in fact, administered irrespective of the question by the Chinese Courts. From the juridical point of view, the laws appear to be regulations applied with the force of law by the courts, but subject to change or rescission at any time by their creators, the President and the Minister of Justice.”³

¹ *Extraterritoriality Commission Report*, p. 28.

² On this point see “China’s New Constitution,” by Professor Lone Liang, in the *Chinese Social and Political Science Review*, vol. x. No. 1 (January 1926), and “The Chinese, American, and German Constitutions,” by the present writer, in the *Hong Kong University Law Journal*, vol. i. No. 3 (April 1927).

³ *Report*, p. 29.

To which it may be added that a properly constituted Chinese Parliament, if it ever meets, is under no obligation to accept any of them.

III. THE NEW CHINESE CODES

A. The Criminal Law

The Provisional Criminal Code of China was the first portion of the work of codification to be completed. This is not surprising when it is remembered that the laws promulgated by the Central Government during the Ta Tsing Dynasty (and translated by Sir George Staunton in 1810) were entirely penal in form. The Provisional Criminal Code was put into force in 1909, and accepted, with modifications, by the Republic in April 1912. To it must be added the Provisional Criminal Code Amendment Act of December 24, 1914. A Second Revised Draft Penal Code exists, but has not yet been promulgated. "This second revised draft, in addition to containing in Part I more scientific and precise provisions, also specifies in Article 62, that the judges shall take into consideration a number of mitigating circumstances in determining punishments."¹ A few comments upon the existing code are set forth below, since the latest draft is not generally available, and has not yet been put into operation.

The first article of Chapter II declares: "No act constitutes an offence, unless the same is specially made so by law"—an obvious enough principle in Western systems of law, but one unknown to the older Chinese law, and not invariably respected at the present time. Although no person under twelve is considered capable of committing a crime, such a person may be sent to a reformatory. The rule *ignorantia juris neminem excusat* has only a modified application in Chinese criminal law, for it is laid down that "ignorance of law does not render an act unintentional (and, therefore, normally unpunishable); but the prescribed punishment may, on account of the nature and circumstances of the case, be reduced by one or two degrees." The right of self-defence, providing the means used are proportionate, is recognised in Article 15, and the plea of necessity, to avoid an imminent danger, under the same conditions, in Article 16. Attempts are made punishable only when the code

¹ *Report*, p. 30.

pecially enacts it. The recidivist receives a chapter to himself. He renders himself liable to a punishment increased by one degree for an offence once repeated, and by two degrees for more than one repetition. Chinese law recognises only principals and accessories in the commission of a crime. A principal includes a joint offender, an instigator, an instigator of an instigator, or one aiding a principal in the commission of an offence. Accessories include those who aid a principal before the offence, and their punishment is two degrees less than that of the principal. In all, there are five degrees of imprisonment, excluding imprisonment for life, and detention up to two months. Other punishments include death, a fine, deprivation of civil rights, and forfeiture of certain kinds of property.¹ Several chapters contain rules for the reduction or increase of punishments, according to circumstances—matters which in England are usually left to the individual judge to decide. Chapter XV contains a list of periods of prescription, after which the right to prosecute terminates.

Of the specific offences contemplated in the code, only one or two need be mentioned. Chapter IV,² entitled “Offences against Friendly Relations with Foreign States,” is interesting, because it inflicts severe penalties on those who violate the special privileges of foreign sovereigns or ambassadors, or who commit unauthorised unfriendly acts against states, *e.g.* dishonouring the flag of a foreign state. The conduct of electors is strictly regulated in Chapter VIII; and Chapter XXI deals with opium, Article 266 making it a crime to manufacture, sell, or retain, or import opium. Gambling is also prohibited, being punished by a fine.³ In view of the early conflicts of jurisdiction over homicide cases involving Europeans in China prior to the regulation of extraterritoriality by treaty provisions, the chapter on homicide does not seem altogether satisfactory. Article 311 declares: “Whoever commits the offence of homicide shall be punished with death or imprisonment for life or for a period in the first degree.” This includes a duel which ends fatally. An extensive duel may also be considered a riot. Where a person causes death or injury to another through negligence, he may be punished by a fine, varying with the degree of injury. A similar offence against an ascendant is punished by imprisonment.

¹ Usually forbidden, or illegal articles.

² Articles 118–153.

³ Chapter XXII.

Article 326 states: "Whoever fails to give the necessary attention to his occupation, and in consequence causes death or injury to any person, shall be punished with imprisonment for a period not severer than the fourth degree or detention, or a fine of not more than two thousand yuan." This is an elastic and unsatisfactory article. Under it, German doctors in Tientsin, since the war, as will appear later, have found themselves liable, even though they had exercised all possible care and were professionally efficient. Fraud as a crime is defined very widely. "Whoever by means of false pretences or intimidation causes any person to deliver property to him with intent to make it his own, or the property of a third party, commits fraud." Similarly a person who in the same way obtains or causes a third party to obtain an unlawful interest in any property, and also a person who, with intent to benefit himself or a third party, or to injure his principal, acts in any way contrary to his duties in the management of the affairs of the principal and causes damage is criminally liable.

On November 7, 1915, a Police Offences Law was published by Presidential Mandate. A great number of minor offences are comprised in its nine chapters, the punishments for them including caution, fines, detention, confiscation of property, suspension of business, and closing of business. Fines have a maximum of \$15 (\$30 for concurrent offences, or \$20 for a repetition of a former offence), and detention must not exceed fifteen days (or thirty days for concurrent offences, and twenty-two days for a repetition). Trial takes place before police officials, and detention takes place in police gaols. On this law the report comments:

"With regard to the penalty provisions contained in articles 13 *et passim*, these provisions are too severe as regards detention, since there is no appeal to a court of law either on the facts or on points of law, whatever administrative remedy there may be. Furthermore, article 26 provides for arrest in cases *flagrantis delicti* under certain specified circumstances without requiring either that the case be dealt with immediately (for instance, by the police tribunal itself or by a procurator), or that the accused be released on bail pending hearing. The importance of this law lies chiefly in the fact that it touches the daily life of every resident and exposes him to detention for police offences which are generally of a trifling nature."¹

A law relating to morphia was published by a Presidential

¹ P. 30.

Mandate of December 31, 1920, punishing by imprisonment or fine the illegal sale or manufacture of this and similar drugs or of syringes for their injection.¹ The law governing military criminal cases was published by Presidential Mandate on April 16, 1918, and again on August 17, 1921. A similar law, relating to naval criminal cases, was put into operation on April 7, 1916, and again on May 21, 1918. By Article 2 of each, civilians committing certain offences become subject to military and naval courts.²

Brigandage has always been a serious problem in China. Since the revolution, it has become an even graver problem. Accordingly a Presidential Mandate of November 27, 1914, put into force the law relating to suppression of robbery, insurgency, and brigandage. It was amended as far as the section relating to the period of its operation (five years, and three years afterwards) in November 27, 1919, but it was repealed in 1922. In consequence of protests from the military governors of Honan, Hupei, and Kiangsu, however, it was put into force again on March 3, 1923. Foreigners not enjoying extraterritorial rights do not come within the sphere of its operation. By it, persons committing a number of serious crimes specified in the Provisional Criminal Code, or who manufacture stores or carry explosives with intent to disturb the peace, or who take by force arms, munitions, boats, tax-money, or other things for military purposes, or who occupy towns and other places for military purposes, or who hold persons to ransom, become liable to the death penalty. They may be tried by the district court or district magistrate, or by the superior military officer of an area if the offence was committed in a place where a military force is stationed, and if there is no Court of Justice near at hand or in times of emergency. Where a civil court has condemned a person, sentence may only be carried out after approval by the civil governor of a province, or by the Ministry of Justice, if the case is tried in Peking. The death sentence is inflicted by shooting. Reports of the cases must be sent to the Court of Appeal, or the Provincial Judicial Department, and a rehearing may be ordered in doubtful cases.

A number of miscellaneous criminal laws are tabulated in the

¹ *Report*, p. 30. As Chapter XX of the revised draft of the Penal Code contained provisions on this topic, some readjustment will here be necessary.

² *Ibid.* p. 3.

Commission's Report. Two only of them call for comment. The Law relating to Warnings of March 3, 1914, empowers the police and district magistrates to levy fines to a maximum of \$25, or impose detention for a period not exceeding twenty-five days, upon certain disorderly characters, who have neglected police warnings against the commission of certain offences. The Commission regards the powers so bestowed as unduly extensive.¹ More important still, however, is the authority conferred by three Presidential Mandates of July 14, 1914, November 27, 1914, and August 2, 1917, upon the President to make regulations for the maintenance of law and order, and to impose penalties for breach thereof of imprisonment for not more than eighteen months or a fine of \$200. The President might also delegate this power to local officials and police departments, with power to impose penalties ranging from one to six months (exceptionally eight months) imprisonment or a fine of \$60-\$100. This presidential authority has been exercised. The undesirable nature of the authority so conferred upon local officials is apparent from even a cursory examination of the imperial system, where every imperial official of any importance possessed similar powers. To a considerable extent, indeed, this is a reversion to the traditional Chinese system, and makes a serious inroad into the principle which the late Professor Dicey designated as "the rule of law." Obviously the rights of the citizen are inadequately protected when the magistrate can create new offences, and inflict punishments therefor, at his discretion.²

¹ P. 32.

² The remaining laws are :

(1) The Law relating to Offences against the Government Salt Monopoly, December 22, 1914.

(2) The Ordinance relating to the Sale of Poppy Seeds, December 20, 1914.

(3) The Ordinance relating to Prohibition against the Melting of Brass Coins of the late Ching Dynasty, January 20, 1916.

(4) The Ordinance relating to Offences against the Credit of Government Bonds, November 29, 1914.

(5) The Provisional Ordinance for the Suppression of Offences relating to Charitable Donations, September 19, 1920.

(6) The Law for the Preservation of Public Peace and Order, March 2, 1914.

(7) The Game Law, September 18, 1914.

The Law of Publications of December 4, 1914, was repealed in January 1926.

B. Criminal Procedure

The Criminal Procedure Regulations were published by Presidential Mandate on November 14, 1921, for cases arising in the three eastern provinces, involving Russians only. On January 6, 1922, however, the regulations were extended to all Chinese courts for all cases, as from July 1. Two other ordinances exist. The first, promulgated by the Ministry of Justice, relates to the sentencing of accused by order. The other, of January 25, 1922, deals with summary procedure. An account of the procedure followed at an ordinary criminal trial will be given when dealing with modern Chinese courts. Concerning the regulations as a whole, the Commission advocates that the regulations dealing with arrest and bail should be recast, especially for minor cases, punishable by a fine, and for cases relating to persons who have a fixed abode. In some cases also the denial of appeal (except on points of law), where the sentence is detention to a maximum of sixty days, will probably operate harshly. Moreover "the regulations relating to the sentencing of accused by order, even to imprisonment in the fifth degree, do not seem to afford sufficient guarantee to the interests of the accused, notwithstanding the right of filing an objection within seven days." Technically, however, since the publication of the rules relating to summary procedure, this method of sentencing has fallen into disuse. Lastly, since the discretion of the judge is the sole guide to the relevancy or otherwise of the evidence offered, this offers an opportunity for abuse through the admission of hearsay evidence.¹ To this it may be added that observed cases fully illustrate the evil of allowing the judge unfettered rights in this respect.

Certain Army Procedure Regulations, of March 25, 1915 (revised April 16, 1918, and again on August 17, 1921), and also Navy Procedure Regulations of May 21, 1918, also exist. The chief defects of these regulations are :

1. That all persons in military and naval services are subject to the jurisdiction of military and naval courts, for all, and not merely military or naval offences.
2. That civilians committing offences against the military and

¹ *Report*, pp. 33-34.

naval codes are subject to the jurisdiction of naval and military courts.

3. That proceedings in these courts are *in camera*, and special punishments may be instituted for the regular ones.¹

Regulations governing Trial Proceedings in the Courts of District Magistrates were promulgated on April 5, 1914, and revised on January 14, 1921, and again on March 1, 1921, and March 29, 1923. They provide that district magistrates, either alone or assisted by "Trial Officers," shall try cases in districts where no modern courts have been established. Thus, the separation between the administrative and the judicial function in China is still incomplete. By far the greater part of the legal business of China is still tried by these courts. Magistrates have discretionary powers to detain accused for three months before trial, whilst the right to be represented by counsel does not exist in these courts. Written briefs, drawn up by lawyers, may be presented, however. The magistrates need not deliver written judgment, although they are subject to compulsory revision by higher courts in criminal matters.²

Judicial Police Regulations were promulgated on April 4, 1910, and revised on April 4, 1914. They provide for the control of the police by procurators, classify police officials, and deal with arrest, search, release on bail, and similar matters. The term "judicial police" does not denote a separate body of police, but merely the ordinary police performing duties connected with judicial matters. Upon occasion, the police officials may act independently of the procurator. "This practice lends itself to delays, particularly because no prescription exists limiting the period in which these officials can exercise procuratorial powers of investigation before handing a case over to the procurator for his investigation and prosecution of the case."³

C. Civil Law and Procedure

Differentiation between civil and criminal matters is of recent origin in China. Both are found in the Penal Code of the Ta T'sing Dynasty. Accordingly the elaboration of a Civil Code has yet to occur. To supply immediate needs, however, it was provided by a presidential mandate of March 10, 1912, that those

¹ *Report*, p. 34.

² *Ibid.* p. 55.

³ *Ibid.* p. 36.

provisions of the Ta T'sing Lü Li which were not repugnant to the republican form of government should remain in force. Later, Decision 304 of the Supreme Court at Peking confirmed this mandate. This, then, forms the basis of the civil law applied at present. The Supreme Court, in Decision (Appellate) No. 64, has declared that civil cases are decided, first, by express provisions of law; failing this, by custom, and in the absence of custom, by general legal principles. Shortly afterwards, the following requirements were declared to be necessary for the validity of a custom:

1. It must have been observed by the people generally and immemorially.
2. It must have been observed as law.
3. The matter must be one for which there is no express provision.
4. It must not be contrary to public policy or morals.

Furthermore, an order of the Ministry of Justice of September 15, 1918, provided for the recognition of local customs in civil cases. For legal principles, the Chinese courts should look to the draft codes; but as these are incomplete, there must be considerable gaps, which they must necessarily fill for themselves, with little external guidance. As far as the decisions of the Supreme Court are concerned, these are theoretically binding on the lower courts. Several volumes of opinions, however, though of great weight, are not binding, being on abstract cases, but the Commission was of the opinion that a general recognition of all the Supreme Court's decisions ought to be enforced upon the lower courts.¹

Several substantive civil laws have also been promulgated. They are:

1. The Law of Mortgages (relating to immovable property), October 6, 1915.
2. The General Regulations concerning Registration and the Regulations relating to the Registration of Immovables, May 21, 1922. Complete enforcement regulations of these have never been promulgated.
3. Regulations relating to the Examination of Title Deeds, January 11, 1914.²

¹ *Report*, pp. 36-38.

² *Ibid.* p. 38.

As far as civil procedure is concerned, the Civil Procedure Regulations of July 22, 1921, for courts in Manchuria exist. These were extended to all Chinese courts on January 6, 1922. To these must be added the Rules governing Execution in Civil Cases of August 3, 1920, and the Regulations relating to Summary Civil Procedure of January 28, 1922. The Commission commented unfavourably upon the system of detention for civil defendants, adding that it might be explained "by the absence of a bankruptcy law and the non-enforcement of the regulations relating to the registration of immovables, yet it appears that the existing rules do not provide sufficient safeguards against bad faith on the part of the plaintiff." Moreover, detention of civil judgment debtors still exists. Until January 27, 1925, this might be for three years. Now, however, it is confined to three months to permit an investigation of the property of the debtor. The Commission added the further comment that "the rights of third parties are not sufficiently guaranteed under the rules governing execution in civil cases against the false or erroneous assertions on the part of the creditor concerning property allegedly belonging to his debtor."¹ Further difficulties are indicated in Paragraph 82 of the Report :

"It may also not be out of place to mention here the peculiar position which the civil procedure regulations occupy in the Chinese system of civil law. As has been mentioned above, there is yet no Civil Code, so that civil procedure regulations in China precede the Civil Code. Expressions, therefore, are found in the civil procedure regulations which lack definition in a Civil Code. Further, the provisions in Part II, Section III, of these regulations concerning evidence are hardly satisfactory, for several reasons. The modern courts have been functioning for too short a time to build up a body of judicial precedents on the subject. In connection with the matter of documentary evidence, the lack of adequate provisions for securing notarial proof of the execution of documents makes it difficult for a judge to decide whether the documents presented to court are authentic or admissible. The lack of provisions for the securing of notarial proof is due to the absence of notaries public in China (except at Harbin), although article 401 of the regulations mentions notaries public; the absence of complete enforcement regulations for the general regulations governing registration; and of the non-enforcement of the regulations relating to the cadestral survey of land. The matter of securing proper evidence as to the ages of parties in order to determine their legal status is also difficult in the absence in China

¹ Pp. 38-40.

of vital statistics. A similar observation applies to the marital status of parties. An insufficient number of persons trained in the modern sciences makes it difficult to secure proper expert evidence in cases requiring such evidence.”¹

The Regulations governing Proceedings in the Courts of the District Magistrates have already been noticed in connection with criminal procedure. They have also civil provisions, allowing magistrates to detain civil defendants for two months, if there is a probability of their absconding. District magistrates may also detain civil judgment debtors for not more than three months. Legal representation in court, as in criminal cases, is not permitted. There is no revision of civil cases by the High Court, however.² Regulations relating to Arbitration of Civil Cases were promulgated by the Ministry of Justice on August 8, 1921, for civil cases awards having the same force as final judgments.³

A short code, entitled the Law relating to Procedure in Cases involving Non-Extraterritorial Nationals, was published on May 23, 1919, and amended on October 30, 1920. The general purpose of this short code is to provide that unprotected foreigners shall be tried only in modern courts, within the original jurisdiction of the High Court, before specially trained (*i.e.* foreign-trained) judges and procurators. Interpreters must be attached to the court. Detention and imprisonment of unprotected foreigners must always be in a special building—if possible, in modern prisons and detention houses. Moreover, certain Rules for the Application of Foreign Laws were promulgated by Presidential Mandate on August 6, 1918. These laws permit the application of foreign laws in Chinese courts, for foreigners, in matters relating generally to status and family law, *e.g.* with regard to marriage, divorce, legitimation, adoption, family relations, guardianship, and succession.⁴ Some difficulties attending the extension of these laws to Russians at the International Mixed Court at Shanghai have already been indicated.

D. Commercial Law

Chinese commercial law suffers from the same defect as the civil law—no complete code has yet been promulgated. Where the statute law is defective, customs and principles established by

¹ P. 40.

² *Ibid.*

³ *Ibid.* p. 41.

⁴ *Ibid.* pp. 41-42.

the Supreme Court apply. The Ordinance for the General Regulation of Traders was put into force on March 2, 1914. It contains general provisions for the conduct of commercial enterprises. The Commercial Associations Ordinance was put into force on January 13, 1914, and again on May 8, 1923. The Chinese theory of a corporation differs from the English theory and follows the French Code fairly closely. Article I of the Ordinance declares: "An association within the meaning of this Ordinance is a body corporate formed for the purpose of carrying on commercial transactions." There are four kinds of associations, all of them juristic persons. They are: (1) *Société en nom collectif*; (2) *Société en Commandite*; (3) *Société Anonyme*; and (4) *Société en Commandite par actions*. The first corresponds to a certain extent with an English partnership, trading under the names of the partners, and it may be formed of two or more persons. It must be registered with various particulars, and Articles of Association governing the rights and duties of its members in relation to the association are prepared. It may be dissolved under the direction of one or more liquidators. The second form of association corresponds roughly with a limited partnership, being formed of members of limited and unlimited liability. A "*société anonyme*" must have at least seven promoters, who must draw up and sign the Articles of Association. The liability of all members is limited to the extent of their share. Though many of the details differ, the general form of this association is that of the limited liability company. The "*société en commandite par actions*" is composed of one or more members of unlimited liability and shareholders who are liable to pay only the amount of their subscriptions. To this extent, therefore, it resembles the "*société en commandite*," and it is provided that the rules applicable to the latter shall apply also to the "*société en commandite par actions*" in the following respects: (1) the relation between members of unlimited liability and the association; (2) the relation between members of unlimited liability and third parties; (3) the retirement of members of unlimited liability. In all other cases, except where special provisions apply, the provisions applicable to the "*société anonyme*" are applicable to the "*société en commandite par actions*."

A law governing Chambers of Commerce was published on

September 13, 1914, and revised on December 14, 1915. "All Chambers of Commerce are juristic persons and must contain at least fifty members." Their functions are defined by statute, and they are dissolved by liquidators, after a resolution by a two-thirds majority of not less than three-fourths of the members. Arbitration by the Court of the Chamber of Commerce may be a result of joint application of the traders concerned, or by direction of a Court of Justice.¹

Other laws published are :

- (1) The Regulations relating to Registration of Traders of July 19 and August 17, 1914.
- (2) The Regulations relating to Registration of Commercial Associations of July 19 and August 17, 1914 (revised May 8, 1923).
- (3) The Revised Provisional Regulations relating to Accountants of September 7, 1918.
- (4) The Trade Mark Law of May 3 and 8, 1923.
- (5) The Copyright Law of November 7, 1915, and February 1, 1916. By this law registration is required before legal recognition of the right.
- (6) The Stock Exchange Law of December 29, 1914 ; and
- (7) The Law relating to Commodity Exchanges of March 5, 1921.²

E. Martial Law

Even in theory the ordinary law of the land is only partially available to the Chinese citizen at the present time. Its operation is seriously limited by the existence of martial law. This was put into force by a Presidential Mandate of December 15, 1912. Article 1 declares that "in case of war or any other extraordinary event where military guarding is necessary for the whole country or any part of it, the President may declare Martial Law or cause it to be declared in accordance with this Law." Article 5 provides that if the commanding officer of any district is unable to petition the President to declare it, he may do so himself, provided that he sends a report of the circumstances to his superior

¹ See also the *Regulations relating to Arbitration Courts of Commerce*, January 18, 1913 ; revised March 31, 1924.

² *Report*, pp. 42-44.

and the President.¹ The effect of the declaration is that jurisdiction over such local administrative and judicial matters in a guarded area as are concerned with military affairs is transferred to the commanding officer of the area.² In a war area jurisdiction is completely transferred to the commanding officer,³ who also possesses extensive emergency powers. Of this short, but expressive, code the Extraterritoriality Commission observes :

“ Although martial law in itself is a necessity in every country, yet conditions in China have brought about a situation where martial law, or declarations purporting to be ‘ martial law,’ are declared with such frequency that the normal administration of law is being hampered and such security as would otherwise be afforded to civilians through the functioning of the civil courts is endangered. This practice constitutes a grave menace to the proper administration of civil law in China.” ⁴

F. Other Laws

The remaining laws proclaimed in China since the inauguration of the Republic may be briefly dismissed, comment in some cases being unnecessary.

They are :

1. Regulations relating to Maritime Prizes and Courts of October 30, 1917, published as a result of China's entry into the war. The regulations conform to the requirements of international law.

2. The Law of Nationality of November 18, 1912 (revised on December 30, 1914). Detailed regulations for its application were issued by the Ministry of Justice on November 3, 1913, and revised on February 12, 1915. China follows the *jus sanguinis*. Article 1 of the law declares the following persons to be of Chinese nationality :

- (1) One whose father is at the time of birth a Chinese citizen.
- (2) One who is born after the death of his father, and the father is a Chinese citizen at the time of death.
- (3) One who is born in China, whose mother is a Chinese citizen, and whose father is unknown, or has no nationality.
- (4) One who is born in China and whose parents are unknown or have no nationality.

¹ Article 7.

³ Article 10.

² Article 9.

⁴ *Report*, p. 44.

The reconciliation of this law with the different Laws of Nationality of other Far Eastern Powers has occasioned a good deal of difficulty.

3. The Afforestation Law of November 3, 1914.

4. Regulations relating to the Acquisition of Uncultivated National Lands, March 3, 1914 (revised November 11, 1914).

5. Regulations relating to the Suppression of Temples and Monasteries, October 29, 1915 (revised May 20, 1921). By these, no alien may be an abbot of a temple or monastery.

6. Regulations relating to Mining Enterprises of March 11 and May 3, 1914. The principal feature of these regulations is that no person other than a Chinese citizen or corporation may acquire mining rights unless he is a national of a country having relations with China, and has entered into partnership with Chinese citizens. Even then, one-half of the capital must be Chinese-owned, and the foreign partner is bound to declare his intention to observe the regulations and other laws relating to the enterprise. An owner is criminally liable for the acts of his employees, and may not plead that the violation did not arise with himself.¹ The punishments imposed for breaches of regulations seem somewhat severe. Thus, inadvertent excavation outside the registered boundaries of the claim incurs a fine to a maximum of \$500,² and the minerals obtained are confiscated.³

7. Land Expropriation Laws, including the Provisional Regulations for the Expropriation of Land for Railways of July 9, 1913; the Provisional Regulations for the Expropriation of Land for Roads, October 6, 1920; the Regulations for the Expropriation of Land for National Air Stations of June 1921; and a further law, promulgated on October 22, 1915, relating to compensation and procedure for expropriation.⁴

8. Numerous regulations relating to local self-government have been made, but these are not being followed. In many cases the provinces are in open revolt against the capital. Mere mention of these laws is therefore sufficient.

(1) Provisional Law governing Provincial Assemblies (April 2, 1914).

(2) Law governing the Election of the Members of the Provincial Assemblies (September 5, 1912).

¹ Article 105.

³ Article 97.

² Article 96.

⁴ *Report*, pp. 45-46.

- (3) Regulations relating to Provincial Councils (June 24, 1921).
- (4) Law relating to District Self-Government (September 8, 1919).
- (5) Regulations relating to the Election of Members of District Assemblies (June 18, 1921).
- (6) Laws and Regulations relating to Municipal Self-Government (July 3, 1921).¹

G. Criticism of the Laws by the Extraterritoriality Commission

A few criticisms of the Commission upon the laws mentioned have already been given, together with some additional ones. At the conclusion of its survey of the laws, however, the Commission made further criticisms of the codes. In the first place, the Commission notes that the continuance of internal commotion has resulted in the overthrow of the principles enunciated in the Chinese Constitutions, and has weakened (at the present time, one could say without exaggeration, destroyed) the authority of the Central Government. Further, the rights and duties of citizens, as well as the separation of governmental powers, no longer rest upon a sound constitutional foundation. Administrative officials have therefore encroached on the power of the legislature and the judiciary; and these officials are frequently the nominees of military leaders. The laws, therefore, have no popular sanction. Furthermore, military law and military courts have gained at the expense of civil law and civil courts.² Again, the supplementary legislation of local officials rests upon as uncertain a basis as the laws of the Central Government. The Commission also comments unfavourably upon the practice of promulgating laws which cannot be enforced until further detailed regulations have been made, the publication of such further regulations being belated, or else not taking place at all. Yet again, some laws have been issued which refer to laws which do not yet exist—an unfortunate situation, which is made still worse by the uncertainty regarding the extent to which new laws are intended to replace older ones. The following observations also illustrate some of the difficulties resulting from the inability of the

¹ *Report*, pp. 46-47.

² *Ibid.* p. 47.

Central Government to enforce general acceptance of its legal reforms :

“ In consequence of the comparatively short time in which the new laws of China have been in force, the assimilation of their new principles has not kept pace with the legislation. This has brought about two important anomalies in the existing legal system. In the first place, a number of ancient laws and legal principles dating from former times continue to be in force and applied side by side with new laws, thus partially nullifying the modern principles and good effects of the latter. For example, a number of the provisions of the Ta T'sing Lü Li, particularly in connection with matters relating to personal status, such as concubinage and the bonding of children, and the large powers given to the magistrates, all of which are out of harmony with the spirit of the new codes, continue in force. A second example is to be found in the law relating to the Suppression of Robbery, Insurgency and Brigandage, which gives to the military authorities very extensive powers in conducting the trial of such cases in that they do not need to apply the usual rules of procedure. In the second place, the application of a number of the new laws has been restricted, both as regards their provisions and the places where they are enforced. Thus, the Civil and Criminal Regulations are only applied *in toto* in the few modern courts already established ; and even in those courts it has been found that subsidiary legislation, such as the Regulations relating to the detention of Civil Defendants, is not in harmony with the modern principles contained in the procedural regulations. The Regulations relating to sentence by Order in the case of offences punishable with imprisonment in the fifth degree, further tend to limit modern principles of the Procedure Regulations, and, in the magistrates' Courts, which outnumber by many times the modern Courts, there are special procedure rules not in full accord with the letter and spirit of the modern civil and criminal procedural regulations.”¹

In conclusion, it should be noted that no laws even nominally exist in China dealing with the following topics :

(a) Portions of a Civil Code, especially those parts relating to general principles, obligations, things, family, and inheritance.

(b) Considerable portions of a Commercial Code, such as negotiable instruments, banking, maritime matters, and insurance.

(c) Bankruptcy.

(d) Patents.

(e) Pharmacy and medicine.

(f) Registration of vital statistics.

(g) Lunacy.

¹ *Report*, pp. 48-49.

- (h) Cadastral registration of land.
- (i) Notaries public.
- (j) Expropriation of land.

Draft codes on some of these topics have been prepared, but have not yet been promulgated.¹

IV. THE MODERN JUDICIAL SYSTEM OF CHINA

Chinese Law Courts may be classified as follows :

1. *Modern Courts.*

- (a) The Supreme Court at Peking, with the Chief Procuratorate.
- (b) Twenty-three High Courts and their corresponding High Procuratorates.
- (c) Twenty Branch High Courts and their corresponding Branch High Procuratorates.
- (d) Sixty-six District Courts with their District Procuratorates.
- (e) Twenty-three Branch Divisions of District Courts with their corresponding Branch Division Procuratorates.

2. *Transition Courts.*

- (a) Forty-six Judicial Offices attached to the offices of the District Magistrates.
- (b) Nine Judicial Departments.
- (c) One Judicial Preparatory Department.

3. *Magistrates' Courts*, about 1800 in number, to which are attached " Trial Officers."

4. *Special Courts.*

- (a) Five Special Courts in the Special Judicial District of the three eastern (Manchurian) provinces.
 - (1) One High Court.
 - (2) One District Court.
 - (3) Three Branch District Courts.
- (b) Three special Mixed Courts at Shanghai, Hankow, and Amoy.²

¹ *Report*, p. 49.

² The French Mixed Court at Shanghai is apparently not included in the Chinese judicial system.

5. *Military Courts.*

- (a) One High Military Court in the Ministry of War.
- (b) One High Naval Court in the Ministry of Navy.
- (c) Ordinary military and naval courts where high military and naval authorities are stationed.
- (d) Provisional military and naval courts in hostile areas where a military division or a naval squadron is stationed.

6. *An Administrative Court at Peking.*

7. *Police Tribunals.*

General jurisdiction in judicial matters is vested primarily in the Ministry of Justice and secondarily in Provincial Civil Governors. The Ministry of Justice is subject to the control of the President, and contains the following sub-departments :

- 1. Bureau of General Affairs.
- 2. Bureau of Civil Matters.
- 3. Bureau of Criminal Matters.
- 4. Bureau of Prison Affairs.¹

The Minister of Justice controls the exercise of judicial administrative powers by the Provincial Civil Governors and by the highest local officials, and if one of these exceeds his function the Minister may compel him to cancel his act. The Ministry may also require all courts of justice, except the Supreme Court, to forward it reports of all civil cases where the subject-matter exceeds \$1000, and of cases involving personal status of foreigners, as well as important criminal cases. On these reports instructions may be issued. The Ministry also receives petitions and memorials concerning the administration of justice, and takes all necessary steps. The Provincial Civil Governors exercise a similar, but more restricted, supervision of judicial matters in the provinces, as do also the Governor-General and the Defence Commissioner of Jehol and other special districts.²

¹ There are also certain special bureaux, *e.g.* the Bureau of Compilation (*i.e.* of Records), the Law Codification Commission, a Commission for Special Judicial Affairs, and a Judicial Council.

² *Report*, pp. 51-52.

1. *Modern Courts*

These were first instituted in the last years of the Ta T'sing Dynasty, the establishment of Branch District Courts and Branch High Courts being authorised in 1917. The new system (which is still far from complete) contemplates the creation of one high court for each province with branch high courts wherever necessary, district courts and branch district courts. Below these again there were to be local courts, but these were abolished in 1915, and their jurisdiction was transferred to the summary divisions (civil and criminal) of the district courts. To all these courts are attached corresponding procuratorates.

District Courts, where they have been established, have acquired the jurisdiction formerly possessed by district magistrates. They are also registry offices for immovable property. Judicial work may be divided into four parts. One division conducts preliminary examinations in criminal cases before a single judge. The other three have each civil and criminal sections and are the summary division, the division comprising one judge sitting alone, and the division where a bench of three judges sits. The summary division has jurisdiction in civil cases where the amount or value of the property in dispute does not exceed \$1000; various special cases up to any amount; and cases where the parties consent to a summary trial. In criminal cases, jurisdiction extends to offences for which the punishment does not exceed the fifth degree of imprisonment (one year) or detention for not more than two months; and various special cases. In cases where the punishment does not exceed the third degree of punishment (five years), the summary division may decide whether the case shall be tried summarily or by ordinary procedure or (where the imprisonment does not exceed the fifth degree) whether sentence by Order shall be adopted. The division where a single judge sits alone has civil and criminal jurisdiction in cases where a greater amount is involved, or of a more serious nature, than those tried in the summary courts, but which are outside the jurisdiction of the high courts or of the bench of three judges in the district court, which has original jurisdiction in cases which, on account of their technicality, are transferred to it from the court of a single judge, on a motion of any of the parties or an order of the court. The bench of three

judges also has appellate jurisdiction over cases from the summary division, from the district magistrates and the judicial offices, and in criminal cases tried in the magistrates' courts which, although not appealed, are sent to the high court for revision and remitted to the district courts for re-trial.

High Courts are usually situated in provincial capitals, branch high courts being established in other important centres where necessary. Judgments are usually delivered by a bench of three judges, but the president of the court may increase the number to five when the court is sitting in final appeal. The courts have appellate jurisdiction from original decisions of the district court (when there may be a further appeal); from appellate decisions of the district court, when the decision of the high court is final; from district courts, when there has been a motion in due form to set aside a ruling or order of the district court; from the judgments of the magistrates' courts and judicial offices in that category of cases which fall under the jurisdiction of a district court; and from decisions of magistrates' courts in criminal cases, under such circumstances that the high court has an obligatory power of revision. The high court has also an original jurisdiction over offences against the internal and external security of the state, and against friendly relations with foreign states; and a concurrent original jurisdiction in all cases within the jurisdiction of the district courts.

The Supreme Court is the final court of appeal in China from the high courts, acting either as courts of first instance, or courts of appeal; and from the special high courts; and in certain extraordinary appeals.¹ It also has jurisdiction on motions made in due form to set aside a ruling order of the high courts. Finally, it hears appeals from the judicial departments and Judicial Preparatory Departments, under certain circumstances. Trials occur before five judges; and a branch supreme court may be established in the high court of a province which is distant from the capital or when communication with the capital is difficult.²

To the courts of each grade, corresponding procuratorates are attached. The functions of the procurator are: (1) in criminal cases, to make searches, institute prosecutions (in default of private prosecutors), conduct prosecutions, and supervise the

¹ Specified in the Criminal Procedure Regulations, Articles 451-457.

² *Report*, pp. 57-58.

execution of sentences. (2) In civil cases, to act as the state's representative in cases affecting the state's interest or public morals.

Procedure in the modern courts, being modelled on that prescribed in the Japanese codes, follows the Continental rather than the English model. Thus, in criminal matters, the procurator is clothed with inquisitorial powers strange to our conceptions of magisterial function. Except for the institution of private prosecutions for certain types of offences, prosecutions are undertaken by the procurator. In the investigation of offences, chiefs of police and commanders of military police possess the powers of a procurator. The procurator conducts a preliminary investigation involving the possibility of the detention of the accused, search of the premises and so forth. Proceedings are *in camera*, and the accused is not represented by a lawyer. Following this, if the procurator has established a *prima facie* case, he applies for a preliminary examination before the appropriate court. This may last four months, is held *in camera*, and decides where the accused is to go to trial. During the examination the accused may be released on bail and he enjoys the right to legal assistance. When the accused has been committed for trial the case is heard before either one or three judges, the procurator conducting the prosecution. The accused enjoys the usual rights of representation and of examination and cross-examination. The preliminary investigation is an invariable part of the proceedings, but the preliminary examination need not occur where the case is to be tried summarily. Appeals in criminal cases may arise in a variety of ways. The complainant may appeal for reconsideration to the superior chief procurator, if the procurator refuses to prosecute after the preliminary investigation. The procurator may appeal within three days, against the judge's decision not to commit for trial after the preliminary examination. Either side may appeal after trial. A further appeal may only be allowed on the ground that the decision is contrary to law. There is also the possibility of an appeal extraordinary in certain cases, and also the possibility of an application for retrial in the court where the case was first tried.

In civil cases, the plaintiff files a petition with the registrar. It is served by the registrar's staff upon the defendant, and the

case is appointed to be heard not less than three days in minor cases, and not less than ten days in more important cases from the date of service. The defendant must file his defence before this period has elapsed, but the time may be extended. Trials take place before one or three judges in the lower courts, and three or five judges in the superior courts. The usual rights of representation are granted. Judgments, as in criminal cases, are delivered in writing. Defendants in some cases may be detained before trial. Execution is in the hands of execution divisions of the courts. Appeals must be filed within twenty days. Further appeals are allowed where the amount in dispute exceeds \$10, within the same period, if the grounds of appeal are that the judgment is contrary to law.¹

2. *Transition Courts*

These courts were established to bring the procedure of the magistrates' courts of the Imperial period into harmony with the modern procedure. They include judicial offices, judicial departments, and judicial preparatory departments.

Judicial offices are to be created, or have been created, in all districts where there is no modern court. They are under the joint control of the chief judge and the district magistrate. Jurisdiction extends to all civil and criminal cases arising within the district. There are special regulations for each judicial office, but the same sort of procedure is common to them all. The magistrate is intended to exercise procuratorial functions, whilst the judge appointed by the Ministry of Justice tries the case. Appeals are heard by the high court of the province, where the jurisdiction exercised is that appropriate to a district court, had one existed. In other cases, the appeal courts are various.

Judicial preparatory departments were established by the Ta T'sing Dynasty, as a transition to the modern judicial system. Only one still remains in Sinkiang. The procedure follows that of the judicial departments, and the court hears appeals from the local magistrates' court. Appeal from this court lies to the Supreme Court.²

¹ On the whole system of modern courts see *Report*, pp. 54-61.

² On transition courts see *Report*, pp. 61-63.

3. *Magistrates' Courts*

These are the traditional law courts of China, and by far the larger part of Chinese legal business is still in their hands. To separate the judicial from the executive function it was originally proposed to establish judicial offices in every magistrate's court, but this has been carried out for only forty-six magistrates, out of 1800. "Trial officers," however, with a legal training, have been attached to the magistrates' courts. At first, as was pointed out, it was intended to separate the judicial and the executive functions completely in China, but a Presidential Mandate of April 5, 1914, recognising the facts of the situation, provided for their continued exercise. Magistrates' courts now have jurisdiction where no district courts exist, under the supervision of the high court, which appoints the trial officers, on the recommendation of the magistrate. Reports of all criminal cases must be sent to the high court for review. Sometimes a magistrate's court acts as a court of appeal from local court judgments of other magistrates' courts, or as a court of re-trial for cases sent down by the high court. Magistrates also have the power, within limits previously specified, of sentencing without appeal, for infractions of regulations issued by themselves. In the trials before magistrates' courts, the trial officer is the judge, and the magistrate is the procurator. Detention of civil defendants and judgment debtors exists. The right to be represented by counsel does not exist in these courts, but the filing of written briefs is admitted. Appeals, except where judicial departments exist, lie to the high court.¹

4. *Special Courts* ²

The special courts were established in 1920 in Manchuria to take cognisance of cases involving Russians, who were about to lose their extraterritorial rights, and who exist in considerable numbers in this area. Of the five courts created, the high court and the district court are at Harbin. All of them were intended to resemble in function the modern courts, but foreign advisers and interpreters are employed by courts, and a special prison and detention houses are attached to them. The jurisdiction now

¹ *Report*, pp. 63-65.

² The Mixed Courts, having been already considered, are not discussed here.

extends to all non-protected foreigners. Appeals lie from the district court and the branch courts to the high court, and thence to the supreme court. The procedure is identical with that of the modern courts.¹

5. *Military and Naval Courts*

These courts are either permanent or provisional. Permanent courts exercise jurisdiction over the military and naval forces, being divided into high courts for superior officers and ordinary courts for all below the rank of an army colonel or naval captain. They are established by the Ministries of War and of the Navy. Provisional military and naval courts are established where detachments of the army or naval squadrons are stationed. The jurisdiction of these courts extends to the military and naval forces, for offences committed by persons below the rank of a colonel or naval captain, and also, in times of peace, to civilians committing certain offences. In times of war, the jurisdiction of the courts is greatly increased. Trials in these courts are *in camera* and there is no right to be represented by lawyers. Special punishments of banishment or bambooning up to 600 blows may be ordered. Prosecutions are conducted by military procurators who may be : (1) superior officers and non-commissioned officers of the military police ; (2) military aides-de-camp of an army corps, division, or brigade, or the military procurators of the provincial army. For the navy, the corresponding procurators are the superior officers of the naval police, adjutants of the ministry of the navy, aides-de-camp of the flagships of squadrons, commanding officers of naval stations or the superintendent of the naval college specially designated. There is no appeal from a military or naval court, but a new trial may be ordered.²

6. *The Administrative Court*

This court has jurisdiction in cases where a complaint is lodged against the action of the highest department of the central or local government, and on appeal against decisions of the highest administrative department on petitions made against any administrative act of a department of the central or local government,

¹ *Report*, pp. 65-66.

² *Ibid.* pp. 66-67.

illegally infringing the rights of the people. In all other cases, the proper procedure is by petition to the appropriate department, with an appeal to the next department, and so ultimately to the highest administrative department. Special judges sit in the Administrative Court the abolition of which is contemplated.¹ Claims by private individuals against the state are heard in the ordinary courts.²

7. *Police Tribunals*

Infringements of the Police Offences Law and police regulations are tried by the police. Since such trials are considered to be administrative acts, appeals lie to the superior administrative authority. It must be noted that as the administrative court can only hear appeals, asserting that administrative action is contrary to law, there is no appeal to any court from police courts on the facts.³ The Chinese police are divided into the following classes: the ordinary police, the judicial police, the public security police, the Peking gendarmerie, the railway police, and the water police. Certain officials in other Government services, *e.g.* the Customs, Salt, Wine, and Tobacco Administration, also exercise police powers. All branches of the police exercise judicial powers.⁴

Chinese judges and procurators are appointed from the ranks of those who have been successful in the appropriate examinations. After the first examination (which is open only to those who have studied law in a law school for at least three years, and have obtained certificates of graduation) the successful candidates become probationers, under the supervision of the President or the chief procurator of their respective courts. At the end of two years of probation they sit for a second examination and, if successful, they become expectant judges or expectant procurators. From these vacancies in the ranks of the judges and the procurators are filled up. No judge or procurator may take any part in politics, be a member of a national or local assembly, edit a newspaper, practise as a lawyer, hold any office other than those permitted by law, or engage in trade or in any occupation inconsistent with the holding of a public office. When a judicial officer contravenes or neglects his function or loses his official

¹ Jurisdiction would thus be transferred to the ordinary courts.

² *Report*, pp. 67-68.

³ *Ibid.* p. 68.

⁴ *Ibid.* pp. 68-69.

dignity or credit, he may be subjected to disciplinary punishment on the decision of a special tribunal. Such punishment may be : (1) deprivation of rank ; (2) dismissal ; (3) degradation in rank ; (4) suspension of function ; (5) change of office ; (6) reduction in salary ; (7) reprimand by presidential mandate, published in the *Government Gazette*. Registrars, process-servers, trial officers, and judicial officials of district judicial offices are also appointed by examination.¹ Lawyers are admitted to practice after a similar examination to that prescribed for candidates for judicial service. Foreign lawyers of non-treaty Powers can appear in cases involving unprotected foreigners.²

The Extraterritoriality Commission also made a number of important criticisms of the Chinese judicial system in its theoretical aspect. The original intention was to reproduce the normal Continental and Japanese systems, but subsequent events have modified the plan and have tended to obliterate the distinction between administrative and judicial functions, and also between original and appellate jurisdiction. As far as the first point is concerned, this is primarily the result of delegating supervisory functions over provincial courts to the local Government. Again, the magistrates are also judicial officers, whilst the chief of police in some cases exercises procuratorial functions, and police trials are classed as administrative acts. As far as overlapping jurisdictions are concerned, this is due to the abolition of the local courts, with the result that district courts absorbed the function of local courts, whilst in some cases branch high courts exercise jurisdiction formerly belonging to both district and local courts. The magistrates' courts are unsatisfactory. Trial officers have insufficient training, and are selected by the magistrates, who are not only judicial as well as administrative officers, but are exempt from the necessity of delivering written judgments, and they may also inflict fines and detention directly as administrative acts. Lawyers may not be present in these courts, although their presence is most necessary. The transition courts are also unsatisfactory for similar reasons. Military courts constitute a continual menace to the security of the citizen :

“ This withdrawal of all persons in the military service from the jurisdiction of the ordinary courts tends to increase the power of the

¹ For further details see *Report*, pp. 69-73.

² *Ibid.* p. 73.

military over the civilian population. These courts also in time of peace exercise jurisdiction over civilians in a number of cases and in time of emergency in all cases ; the trial is conducted *in camera* ; legal counsel is denied, appeal is not allowed ; and corporal punishment up to 600 blows of the bamboo is permitted. The withdrawal of civilians even in time of peace from the jurisdiction of the regular courts in any category of cases further strengthens the power of the military over civilians. In cases which are adjudicated by the military courts in times of emergency there exists no provision for a reconsideration of such matters by the ordinary courts after the withdrawal of martial law, nor is there any redress for injustice suffered by civilians during the period of martial law after its withdrawal apart from complaints to a military court.”¹

Further, the jurisdiction exercised by the police tribunals is too wide and too irresponsible. They can arrest persons and conduct investigations without any reference to the law courts. The remedy against administrative acts by appeal to the administrative court is unsatisfactory, especially as only one court exists for the whole of China. The existence of any administrative court at all is contrary to Article 99 of the Constitution of 1923. As far as unprotected foreigners are concerned, the Chinese Government has made every effort to secure their trial in modern law courts, and has provided interpreters to ensure a proper hearing.²

V. MODERN CHINESE PRISONS

The conditions prevailing in Chinese prisons at the beginning of the nineteenth century were one of the obstacles to the recognition of Chinese jurisdiction over foreigners at that period. Even in Kwangtung to-day, as has already been indicated, conditions are still very bad. Nevertheless, the Chinese Government has made repeated efforts to establish a system of modern prisons, and some progress was made before the fall of the Empire. At the present time there are 63 modern prisons, and about 1600 prisons of the old type, in some of which improvements have been effected.³ There are also detention houses attached to the modern prisons for accused awaiting trial, for civil defendants, and for judgment debtors. Chinese prisons are under the supervision of the Ministry of Justice and provincial civil governors.

¹ *Report*, p. 76.

² *Ibid.* pp. 74-77.

³ For a list of the modern prisons see *Report*, app. v. p. 122.

Chief procurators of high procuratorates supervise prisons under their jurisdiction on behalf of the Ministry of Justice, which also sends inspectors from time to time. Reports from prison warders must also be forwarded from time to time. In Manchuria there is a travelling prison superintendent who supervises prison administration. Prisons of the old type are supervised by the district magistrates, who send reports from time to time to the high procuratorates. Certain rules and regulations concerning the administration of prisons have been promulgated at various times. Prison officials are appointed by examination open to persons who have studied for not less than a year and a half in a Chinese or foreign law school and to persons who have completed a course in a recognised school of penology, and also to persons who have occupied certain official posts. Governors of prisons are appointed by the President ; other prison officials by the chief supervising official.

Of the theoretical system, the Commission observes that it is satisfactory, but that the new prisons form only a small percentage of the entire number.¹

VI. THE ENFORCEMENT OF CHINESE LAW

Having examined the reforming legislation promulgated in China, it is now necessary to inquire to what extent this is carried out in practice. In the present section extended references to the Commission's Report will be made, but also the opinions of a number of other foreign observers will be considered, together with a number of cases recently decided in Chinese courts.

In its introductory observations upon Chinese judicial practice, the Commission notes the Central Government's lack of control over provincial military authorities, and the rival governments which have been established from time to time in Canton. It also notes that the confusion which has resulted from the failure to adopt and establish a Constitution has been responsible for a lack of continuity in legislation, which has been carried out by either the President or the Minister of Justice, with occasional assistance from other Ministers.

" In addition to the lack of a controlling central government there has been for several years almost continuous civil warfare in various

¹ *Report*, pp. 78-79.

parts of China. Twice, since the convening of the Commission, railway communications with Peking, the Capital city, have been cut off and the tour of investigation planned by the Commission was delayed for six weeks on that account. Growing out of this disordered state of affairs brigandage has become common in many parts of China, constituting a further menace to the lives and property of the civilian population. . . .

“Among the many serious consequences resulting from this disorganisation there are a number which have an important bearing upon the administration of justice. In the first place, the reins of Government have fallen into the hands of the military leaders, who, by virtue of their powerful position, can assume at will administrative, legislative and judicial functions, thus tending to obliterate the line of demarcation between the executive, legislative and judicial branches of Government. In the second place, the Government Treasury has been depleted to such an extent that funds are at times lacking with which to pay the judicial and police officials. In the third place, the uniformity of the legal and judicial systems is being impaired because of the independent laws and courts established in areas which do not recognise the Central Government. In the fourth place, the extension and perfection of the new legal and judicial systems are being retarded.”¹

To these must be added the circumstance that the old abuses of the old judicial system in China still flourish, although the Central Government has made repeated efforts to stamp them out. Thus a Presidential Mandate of December 28, 1914, advocates, as improvements in the existing state of affairs, the stringent examination of law officers, a check upon their work, control of the practitioners of law, abstention from appointing magistrates to their native towns (to guard against partiality), the appointment of district prefects to act as judges where necessary, and extensive judicial reform. Soldiers, officers of higher rank, and others interfering with the course of justice render themselves liable to severe punishment.² A later mandate of January 10, 1915, threatens judicial officers with heavy penalties if they join political parties, whilst a mandate of April 28, 1919, declares :

“The prefects of districts are officials in close touch with the people. They are authorized concurrently to administer justice because of their knowledge of the people’s conditions and their sympathy with the people’s circumstances. However, according to a joint memorial from Chen Neng Shun, Minister of Interior, and Chu Shen, Minister of Justice, the district prefects are stated to have

¹ *Report*, pp. 80–81.

² Kotenev, *Shanghai : Its Mixed Court and Council*, p. 187 note.

repeatedly practised extortion upon clever pretexts on various occasions in dealing with lawsuits. The reckless imposition of fines such as they have imposed is not only detrimental to the dignity and prestige of the judiciary, but also contrary to their avowed duty and office as protectors of our people. Such practices should be strictly forbidden. Further, the prefects of districts, in handling cases of litigation, should carefully respect our laws, they must not extort money from any lawsuit and thereby disturb and injure the people. The superior officials above them are hereby ordered to exercise timely supervision and, should any abuses, as before mentioned, be discovered and proved, the said superior officials should request us to inflict as severe a punishment as possible in order to pursue our administration and reassure our people.”¹

On June 19, 1926, the *China Weekly Review* (Shanghai) published a special number dealing with extraterritoriality, and giving a picture of the administration of Chinese law in the various provinces. These accounts vary considerably, both in content and point of view, but certain features reappear in all of them. Many of the accounts were compiled by missionaries, who, as a body, are distinctly sympathetic towards China's aspiration to recover judicial autonomy, but their sympathy does not permit them to ignore the evils of the present system. There seems no reason to doubt the substantial accuracy of the reports. A perusal of the foreign press in China will confirm most of the reports published, and some reference to cases in support of them, from the foreign press, will be made shortly.

On the position of Germans in China, since the abolition of their extraterritorial rights, Fritz M. Witkowski (Far Eastern Correspondent of German newspapers) makes the following observations :

“If the private opinion of the writer, who by means of his extended newspaper work represents a large body of German readers, is of some interest . . . he may mention that he himself considers as one of the reasons for the so far satisfying experiences of German within Chinese jurisdiction the fact that some of the big Powers still enjoy their extraterritoriality. Firstly, it is for the Chinese a matter of ‘face-saving’ not to give any just cause for complaint. For how can they expect the ‘first-class nations’ to give up their rights if this doesn’t work with the ‘second-class nations’? Secondly, as shown in the case of Mr. Sherer in Mukden, a German citizen sentenced to fifteen years’ hard labour by the Chinese and pardoned through the efforts of the extraterritorial consuls of this city, there rests still such a big

¹ Kotenev, *op. cit.* p. 280 note.

influence with the Treaty Consuls as to prevent any outspoken legal outrage against a citizen of a non-extraterritorial country.”¹

In an able article dealing with “The Courts and the Administration of Justice in Kwangtung Province since the Republic,” Mr. Hin Wong observes that, in spite of frequent political disturbances in that province, law reform has been progressive and continuous, but frankly adds :

“The Kwangtung Courts are expected to function regardless of change in civil administration, it being supposed to be more or less independent from politics or other influences. In practice, however, they have for a time been allotted only whatever power (is) not usurped by Military or Civil officials existing at the same time.”²

Later, he points out that existing courts are inadequate in numbers, and that frequent delays have often been the cause of miscarriages of justice. On the other hand, in the highest courts of the province are men of ability, trained abroad, and a Special Board of Indictments has been established to prosecute, and a Court of Impeachment to try, all officials guilty of malpractice or corruptions. In conclusion, he observes :

“With special attention against further usurpation on the part of executive officials and military power, the Judicial Commission now in Kwangtung should find fewer obstacles to the development and improvement of the power of the judiciary.”³

An American observer, Mr. E. H. Turner, took an encouraging view of the administration of justice at Chekiang, but mentioned that there was a lack of trained lawyers, an absence of public interest in the administration of the law, and an undue severity in many of the penalties. Moreover, the administration of the law, and more especially of the criminal law, is circumscribed by the enforcement of martial law throughout the province. This martial law takes cognizance of practically all serious crimes. Frequently an offender is shot without a trial.

“The way out lies in the willingness of military leaders to cease interfering with the regular courts and co-operate with them by handing the offenders over to them for trial. This will put the administration of justice back on a normal basis, and there will be opportunity then for the Courts to attend to the reforms which they

¹ *China Weekly Review*, June 19, 1926, p. 74.

² *Ibid.* p. 72.

³ P. 76.

themselves feel ought to have consideration. If this cannot be done the unwillingness of foreigners to have their extraterritorial privileges suspended is not to be wondered at. The foreigner does not want discrimination, but he does want a guaranteed and unimpeachable right to take his troubles to the regular courts. If Chinese citizens are being robbed of this privilege inherent in democracy, naturally, the foreigner does not want to surrender his right to protection by his Government.”¹

The writer also suggested that even after extraterritoriality had been abolished there should be special courts for foreigners. A medical missionary in Shantung wrote: “I have seen some twenty magistrates in the two years I have been here, and with one exception they have dispensed justice to the highest bidder. Because this one magistrate tried to render just decisions he was accused and had to leave after five months.”² From a large city in Shantung another writer reported constant miscarriages of justice. In Huang-shien, according to another writer, personal influence is the greatest power which can be secured in all so-called legal matters.³ A correspondent from Chefoo declared that the majority of the Chinese of the place realised their inability to secure justice so long as the militarists ruled, and that most Chinese there would agree that extraterritoriality had been a good thing, “and that peace can best be maintained by it.”⁴ In Tsining there are no lawyers, “so the county magistrate hears the testimony of both sides and then passes judgment. It often takes ten days after action has been taken before the magistrate will hear the accusation. Then after that the case may drag on for months or years. Meanwhile the principals spend much money appealing to the County Governor and the Provincial Governor at Tsinan, and whoever spends the most money gets the decision.” In order to institute a suit, the Court runner must first be feed.⁵ In Northern Kiangsu things are no better now than they have been for the past 2000 years. Civil cases are decided “simply on a financial basis.”⁶ In criminal cases prisoners are tortured to confess.⁷ Execution by cutting slowly to pieces still exists.⁸ In Wusih (Kiangsu) torture of prisoners accused of crime is still practised.⁹ In Huchow (Chekiang) something approximating to a modern independent judicial

¹ *China Weekly Review*, June 19, 1926, pp. 27-28.

³ P. 30.

⁴ P. 32.

⁵ P. 83.

² P. 30.

⁶ P. 84.

⁷ P. 85.

⁸ P. 87.

⁹ P. 36.

procedure apparently prevails.¹ In Hunan, "no sweeping charges of inefficiency can be made, unless strict adherence to Western methods is demanded, and the Chinese mentality is ignored"²—certainly somewhat faint praise; and the writer elsewhere notes that the magistrates are reluctant to render decisions, that slowness and compromise characterise legal procedure, that bribery exists, and that the instability of the Government seriously hampers the administration of justice.³ In Fukien "the present County⁴ Courts of the Republic that have come under the observation of the writer are organised along identical lines with the Courts that existed under the monarchy, only there has been retrogression in their administration due to the disorganised state of affairs."⁵ Bribery is exceedingly common. A proposal to establish a "model Court" failed, for the simple reason that a "model Judge was undiscoverable."⁶ In Anhwei there are no formal courts in the different Hseins except in the large cities. "The city magistrates serve consecutively as judges, which system produces much corruption."⁷ Judicial torture also exists.⁸ From North Kwangtung, a foreign missionary, commenting on several observed cases, declares of the decisions that "it is a question of which party has the greater political influence. It seems as though decisions often depend not so much on the questions of principle or of what is right or what should be done, but rather on what is the best policy."⁹ In North-Eastern Chihli,

"there is an abundance of justice of the type which seems to suit the Chinese mind, that is, by playing on all possible factors of friendship, kinship, brow-beating, persuasion, etc. The attempt is made to arrive at such a compromise of the case in point as will reasonably placate both parties, save as much face as possible for all concerned, and release as much cash as possible for those responsible for the happy ending. There is no attempt, nor any thought of judging the case strictly on its merits, without regard to favour, that is, to secure justice in the strict sense of the term. Neither party expects it, and it is doubtful whether they desire it."¹⁰

Such are the opinions of foreigners who have lived for many years in contact with the conditions they describe.

There is no lack of confirmation of their accounts of conditions

¹ *China Weekly Review*, June 19, 1926, p. 37.

² P. 39.

³ P. 40.

⁴ *I.e.* District Magistrate's.

⁵ P. 41.

⁶ P. 42.

⁷ P. 45.

⁸ P. 50.

⁹ P. 45.

¹⁰ Pp. 47-48.

in China. Following the Washington Conference, a Joint Committee of the British Chamber of Commerce at Tientsin and the China Association issued a questionnaire to a large number of British subjects of standing in various parts of China, containing questions relating to judicial procedure, maintenance of constitutional rights, application of codes of law, independence of judicial officers, impartiality of courts, condition of gaols, police administration, and other topics. General conclusions, drawn from these accounts, were published by the Tientsin British Committee of Information on October 21, 1926.¹ A portion of the memorandum reads as follows :

“ In general it may be said of these replies that, while they indicate a certain measure of progress, notably in Shansi, the general impression which they convey is that real progress is exceptional. Security of person and property appears to be no greater than it was twenty years ago. There is a new and developing consciousness of the individual's moral rights, but his legal rights have not, in practice, kept pace with this development. On the contrary in some parts of China it would appear that the individual is less certain of justice than he used to be. The use of corporal punishment as a method of extorting evidence is still widely prevalent. Although new courts have been brought into existence and new procedure has been adopted the answers to the questionnaire show that in very few places are judges independent, and that in most military power and influence predominate. While there has been a certain amount of prison reform, and in several places the prisons that exist to-day are greatly superior to those that used to exist, there appears to be very little improvement in the police system, while police officials play an important part in the administration of justice. There are a number of lawyers of whom an increasing number are trained on modern lines. In some places they are allowed to plead, but the answers to the questionnaire do not tend to show that the influence of these new men has so far had much effect, or been allowed to have much effect, in raising the standards of justice.

“ The accumulation of evidence over a large area and the process of sifting by responsible people necessarily occupies considerable time. Many of the foregoing conclusions are now some two or three years old and during that period so far from there being an improvement of conditions it has to be admitted that there has been a serious decline. It is not however only that there have been political assassinations, rapine, loot and devastating disorganisation, consequent upon civil war, but there has been also an increasing growth on the part of those in authority in the direction of the disregard of law and order. Within a few months two editors of Peking newspapers have been shot without trial, even without any charge being formulated. Extortions of a very

¹ Memorandum No. 13.

grave order have been frequent. Prominent citizens have been arrested and threatened in order to bring pressure to bear to make so-called loans, either themselves or by means of institutions with which they are connected. Cases have even occurred, where pressure has been brought to bear on foreign institutions through threats to Chinese working in association with them.

“ Conditions indeed are so serious that many prominent Chinese elect to live in the foreign settlements in the hope that if they cannot secure absolute protection, in the last resort they may at least enjoy the relative protection, which results from publicity and public opinion. Few spectacles are more fraught with meaning than that afforded by Chinese Banks in foreign Settlements, whose main function is to serve as treasure houses immune from illegal process, imposing mansions owned by Chinese, many of which are solely designed for sanctuary in periods of political crisis, and the influx of population in times of trouble.”¹

The memorandum also reproduces the following extract from an article contributed by Mr. Tang Shao Yi, a former Chinese Premier, to the *North China Daily News* immediately before the assembly of the Extraterritoriality Commission :

“ The sanctity of the law courts is an elementary condition to the development of good government. In China, unfortunately, a system has come into existence of certain individuals regarding themselves as superior to the courts. They not only cannot be subjected to judicial procedure, but they interfere with the operations of justice. They write letters to the judges making suggestions as to decisions. They insist upon the appointment of their henchmen as judges and order such judges to obey their dictates. They even hold courts of their own on the subterfuge that they are enforcing a martial law, and throw men into prison without due process of law. The case of Mr. Eugene Chen is an instance of the operation of this system of military interference with the courts. What difference does it make to the Chinese people whether such a commission comes or not ? The courts exist not for the few foreigners in China but for the many Chinese, and their operations must be designed to afford protection to the Chinese people. Those who grow so enthusiastic at the comings and goings of these commissions seem to forget that the sufferers from maladministration are not the foreigners but the Chinese people. Both the instances cited are of military interference with the law, and until such circumstances cease to be possible there is no hope for the progressive development of justice in this country. Even the highest officials, even the President himself, must be subject to the operation of the law through courts of justice before we can even approach justice. To me this is more essential than that we shall have codes and model

¹ Pp. 3-4.

prisons to satisfy commissions to abolish extraterritoriality. Extraterritoriality is a matter of pride ; my suggestions concern the very life of our people.

“The judiciary has to be reorganised. Trained, experienced judges have to be appointed. As suggested, the judges have to be made absolutely independent and the body of the law must be respected by all officials of the Government. In former times, when the Magistrate was the judge, he was regarded as the father and mother of the people. His court and its decisions were respected. Of course, it must be admitted that some of their decisions would to-day appear to us to be lacking in the qualities of mercy with which justice must be mixed, but it is ridiculous to suggest that we have no tradition of respect for the courts. During the Republic, judges and judicial officers have been known to accept bribes. There is only one solution to that, and it is that bribery shall be made a capital offence for both the bribe-giver and bribe-taker until we have extirpated this cancer from our body politic.

“It is important here to reiterate the point of view, that in rewriting our codes, in improving our prisons, our point of view should not be to satisfy any commissions appointed under the Washington Treaties, but to benefit the Chinese people. It is absurd, for instance, for the Ministry of Justice to ignore the Chinese people and their needs and then to rush mandates and telegraphic messages about the country, ordering sudden and not well-planned improvements to impress these commissioners. What we need is a thoroughly considered plan which will give the Chinese people a judicial system and a law which will protect them and their property. That cannot be done in a day and therefore no attempt should be made to accomplish it in a day. We can request the Washington Conference Commission to wait until we have satisfied ourselves that any criticism will be unjustified. As a matter of fact, no system can be suitable for the Chinese people which is not good enough for the foreigners living in China.”¹

It is now necessary to discuss some of the more important of existing defects more specifically. Of these the continued interference by the military authorities with the administration of justice is the most serious. The Extraterritoriality Commission repeatedly notes this circumstance with disapprobation. The irresponsible position of military leaders and their adherents is clearly brought out by Paragraph 205 of the Report :

“By virtue of Chinese law itself, the legal position of the military renders them immune from the jurisdiction of the ordinary courts, while their power, in fact, often renders them immune from all courts.

¹ P. 4. In the last paragraph Mr. Tang Shao Yi adopts almost precisely the same position as that assumed by Japan before the abolition of extraterritoriality in that country.

This immunity is liable to be extended to the friends of the military and to the commercial firms and organisations in which they are interested. Ample evidence of the foregoing is brought out by the fact that the military are constantly committing crimes which go unpunished, for it is generally difficult for aggrieved civilians to obtain any redress from military authorities commanding their own armies when such redress must be sought in military courts controlled by these authorities.”¹

The Report cites the following cases which occurred whilst the Commission was actually sitting :

1. *Case of Chang Chih*

In this case, the victim was Chief Justice of the High Court of Shangtung. On December 5th, 1925, he was arrested on the charge of being in communication with an opposing faction. He was shot the following morning without a trial of any sort, and the military governor of the province appointed the presiding judge of his military court in his place. No legal or disciplinary action of any sort was taken as a result of this outrage.²

2. *Case of Hsü Shu-Tsing*

The victim was a prominent Chinese military leader. While returning from Peking to Tsientsin, after paying a visit to President Tuan Chi-jui, he was arrested by military railway guards at Lafang, on December 29th, 1925, and shot. A Mr. Lu Cheng-wu, a military officer, admitted responsibility for the murder, alleging that in 1917 Hsü had ordered his father to be similarly shot. No action of any sort was taken in this case, nor had there been any as a result of the murder of Lu's father in 1917.³

3. *Case of Sha Piao Ping*

The victim was the editor of the Chinese newspaper *Ching Pao*. He was arrested by the Peking police on April 25th, 1926, on the ground that his writings were in opposition to the military party in control of Peking. He was handed over to the military, who shot him, without a trial, on April 26th. No legal action of any kind.⁴

4. *The Speculators in Military Notes*

The commander of the Peking garrison issued an order on June 18th, 1926, prohibiting speculation in military notes, on pain of capital

¹ *Report*, p. 82.

³ Pp. 82-83.

² P. 82.

⁴ P. 83.

punishment. There was no legal authority for this order. In consequence of this, or a similar order, five Chinese were shot at Mukden, on August 19th, 1926, without a trial of any sort. During the following days other Chinese were similarly dealt with.¹

5. *Case of Han Teh-nieng*

This person, formerly an official in the Salt Administration, was shot by order of the Military Governor of Chihli, on July 18th, 1926, for having incurred the Governor's displeasure in handling the funds.²

6. *Case of Chu Tieh-fu*

The Military Governor of Kiangsu issued a new regulation for the suppression of the morphia and opium traffic in the province, in accordance with which Chu Tieh-fu of Shanghai was arrested, tried and shot in July 1926, for smuggling morphia and heroin.³

7. *Case of Otto Heinsohn*

This man, a German citizen of Foochow, was arrested on August 3rd, 1926, without warrant, and thrown into a military gaol, by order of the Military Governor of Fukien. Heinsohn had been employed by a German firm which had supplied arms from Germany to the Military Governor of Fukien. After Germany had agreed to prohibit the export of arms to China, shipments ceased. This apparently constituted Heinsohn's only offence. The case was not decided when the Report was completed, but Heinsohn was released on parole after a month's detention.⁴

8. *Case of Lin Pai-shui*

Lin edited the *She Hui Jih Pao* at Peking. He was arrested and shot without trial on August 6th, 1926, by order of a member of a military party at Peking. The latter held no official position, and martial law was not in force at the time. The charge was connection with a rival military party.⁵

9. *Case of Chen Shen-wu*⁶

Chen was manager and editor of *Shih Chieh Jih Pao*, a Peking periodical. He was arrested on August 7th, 1926, and sentenced by order of a military official to penal servitude for life. He was released three days later, in consequence of the indignation provoked by the preceding case.

¹ Pp. 83, 85.

⁴ P. 84.

² P. 84.

⁵ P. 85.

³ P. 84.

⁶ *I.e.* Mr. Eugene Chen.

10. *Case of Boris G. Ostroumoff*

Ostroumoff, a Russian, was general manager of the Chinese Eastern Railway, the status of which was regulated by Sino-Soviet Agreement of May 31st, 1924. There was to be a board of five Chinese and five Russians. In defiance of the agreement, Ostroumoff was dismissed and placed under arrest by the Military Governor of Manchuria on October 3rd, 1924, and imprisoned at Harbin without a warrant, bail being refused. The charge was corruption. On January 1st, 1925, the Chief Executive of China issued a general amnesty, in accordance with which Ostroumoff ought to have been released. The Military Governor of Manchuria, however, excepted Ostroumoff from its operation, and he remained in prison. He saw a copy of the charge for the first time on April 4th, six months after arrest. The trial was begun on June 4th, 1925, and continued until September 12th, when the accused was discharged and released under the amnesty of January 1st, which the Manchurian court had refused to recognise eight and a half months earlier.¹

In consequence of these cases, and of others considered but not reported, the Commission came to the conclusion "that in China at the present time there is no effective security against arbitrary action by the military authorities, in so far as such security can be afforded by an effective functioning of the Chinese civil and judicial authorities."² A consideration of other examples of military interference will now be attempted. A few of them concern foreigners in China, but it must be understood that no adequate record of unredressed anti-foreign outrages since 1924 is possible.

11. *The Shanghai Tramwaymen*

A strike of Chinese tramwaymen at Shanghai was caused in 1926 by the action of Chinese marines in beating employees of the Chinese tramway company, and in confining one of them in the naval headquarters, on the charge of purposely delaying a tramcar in which they were travelling, redress being subsequently refused to the tramwaymen.

12. *The Wanhsien Affair*

The British steamers *Tien Kuang*, *Wanlieh*, and *Chia Li* were forcibly seized by military forces under the command of General Yang Sen, on June 13th, July 8th, August 2nd, and August 29th, 1926, British ships' officers being detained, and the ships being commandeered to convey soldiers, in violation of British neutrality during

¹ Pp. 85-86.

² P. 87.

China's civil wars. General Yang Sen declined to discuss the incident with the British Consul at Chungking, or to allow a legal enquiry. On September 5th, therefore, H.M. Ships *Widgeon*, *Kiawo* and *Cockchafer*, proceeded to Wanhsien to effect the release of the ships and their officers by force. "As soon as the S.S. *Kiawo*¹ approached one of the detained merchant vessels, a murderous rifle and machine gun fire was opened upon her without warning by the Chinese soldiers, and the other British vessels were also subjected to a heavy rifle and field-gun fire from the troops on shore." As a result, three British officers and four men were killed, and two officers and thirteen men wounded. The ships and officers were liberated, after the British ships had bombarded the Chinese troops on shore.² It must be noted, in addition, that this episode was the culmination of over two years' continual interference with British shipping along the Yangtse by Chinese military authorities, and that the same interferences were continued after the episode.

13. *The Kweilee*

In September 1926 the China Merchants' vessel *Kweilee* was stopped near Tchang by forces under the command of General Yie Kai Hsing. The compradore was taken ashore, and compelled to pay \$6800 before he was set free.³ No redress of any type was offered by Chinese Courts.

14. *The Wantung*

On September 25th, 1926, the *Wantung* arrived at Tchang, with everything movable stolen, doors smashed, and fittings wrenched off from cabins and saloon. Upholstering was ripped open. This was the work of other detachments of Chinese soldiers on the Yangtse.⁴ No redress offered.

15. *Murder by Soldiers at Ichang*

A native cook was deliberately shot, after being robbed, at Ichang on November 17th, by a soldier. He died the following morning.⁵

16. *Robbery by Soldiers at Paotingfu*

Fengtien soldiers appropriated all available supplies, without payment, inhabitants being beaten, at Paotingfu in January 1927.⁶

¹ She was a merchant vessel temporarily manned by naval officers and men.

² Memorandum of British Minister to the Chinese Government, September 30, 1926.

³ Special Supplement to *North China Daily News* of April 1927, entitled "China in Chaos" (reproducing recent telegrams), p. 13.

⁴ *Ibid.*

⁵ *Ibid.* p. 14.

⁶ *Ibid.*

17. *Case of Mr. Ai Ming Chen*

This person, a Chinese missionary, was shot by Nationalist soldiers in March 1927, for offering to ransom foreign friends, who were being held prisoners, during the Nanking outrages.¹ No general consideration of the episodes at Hankow, Kuikiang, and Nanking is attempted.

18. *Case of Li Tao-chao and Others*

Following the seizure of documents by the Chinese Government in the Soviet Embassy at Peking, in April 1927, a special military court was formed under the Presidency of General Ho Feng-lin to try Chinese implicated. The Court investigated the evidence informally, and on April 28 Li Ta-chao and seventeen others were arrested by the police, and strangled at police headquarters without a trial.² Among them was Chang Yu-lan, a woman. They were sentenced under Article 27 of the "Military Law."³ Others were sentenced to death or imprisonment in the succeeding days.⁴

19. *Occupation of Foreign Property*

In May 1927 the premises of the China Inland Mission at Hangchow were in the possession of the military, the chapel being used as a recruiting office.⁵

20. *Case of Chen Tien-nien and Others*

In July 1927 Chen Tien-nien, son of the chairman of the Chinese Communist Party, was arrested at Woosung by the Special Police and handed over to the military. He was tried before General Yang Hu, and shot immediately afterwards.⁶

21. *Case of Dr. Gao*

Dr. Gao, a foreign-trained Chinese missionary, was arrested by the order of military authorities at Soochow in Kansu, on an entirely unsubstantiated charge of breaking into a prison and allowing a criminal to escape. He was imprisoned for three and a half months, and then removed to Kanchow for trial, being compelled to walk the entire distance. Shortly before, he had attended a carter, who had been brutally ill-treated by soldiers at Soochow.⁷

¹ Supplement to *North China Daily News*, p. 55.

² *North China Herald*, May 7, 1927, p. 241.

³ It is doubtful what this means. It is neither the Martial Law of China nor the Regulations governing Military Courts Martial.

⁴ *North China Herald*, May 7, 1927, p. 241.

⁵ *Ibid.* June 4, p. 415.

⁶ *Ibid.* July 9, p. 49.

⁷ *South China Morning Post*, July 14, 1926.

22. *Repression of Disorderly Soldiers in Peking*

In the last week of October 1926 a Chinese soldier was arrested by order of General Yu Chen, in Peking, for trying to enter a theatre without paying, and for firing a rifle at the lights afterwards. He was executed and his head exhibited over the gateway of the theatre. Other soldiers were similarly dealt with. Repression of disorder in Peking was considerably overdue, but the measures adopted were exceedingly drastic.¹

23. *Case of Henan Chi*

After the failure of the Union Trading Corporation, a Chinese company at Tientsin, its promoter, Mr. Henan Chi, disappeared. He was discovered and arrested, however, and held in custody by the Chinese police. From the Tientsin City gaol he was removed on July 30, 1927, to a military prison, and put in irons, being later tortured to compel him to make a statement concerning funds he was reputed to possess. One million dollars was demanded as the price of his freedom, payment to be made to the local military authorities. Several other co-debtors remain in civil custody. The illegality of the act is increased by the fact that ten days before the prisoner had been taken by the military, a mandate had been issued by the Central Government, Article 6 of which stated: "Every arrest of a civilian for offence against civil or criminal law, every detention, every trial and every act of punishment of a civilian for such offence shall be carried out by the ordinary judiciary. No military authority or officer or office shall be allowed to interfere. In case the rights of citizens are infringed by a civilian offender, the accused shall be brought before the competent court within three days to be dealt with according to law. Should the accused be found innocent, or should no evidence be brought against him, he shall be immediately released."²

24. *Case of William Frederick*

William Frederick made a sworn statement before the clerk of the United States Court for China on March 15th, 1926, containing the following particulars: In consequence of refusal of the right to register by the American Consul, he became subject to Chinese law. He opened a family hotel in the Chapei district at Shanghai, and added a dancing pavilion, a permit being given by the Chapei Municipality, on the recommendation of the Chief of Police. The latter was replaced by another, who demanded certain illegal fees and also various loans. He also placed two soldiers, at a charge of \$2 a night, at the pavilion. These demanded and obtained meals and refreshments without payment. Finally, the Chief of Police demanded a

¹ *South China Morning Post*, November 13, 1926.

² *The Times*, September 15, 1927.

loan of Taels 500, which was refused. The hotel was accordingly closed. Frederick appealed to the Commanding General of the district, and succeeded in having it reopened. Shortly afterwards, Frederick was thrown into prison by the police. The following morning he was charged with permitting gambling and the presence of prostitutes at his hotel. This he denied, and offered to produce witnesses in support of his statements. This was refused, and he was taken to Lungwe military prison. Five days later, all legal assistance being refused, he was tried in a hay-barn, surrounded by soldiers with fixed bayonets. Afterwards he was released, through the good offices of a friend, who knew some higher officials. Nevertheless, he was refused access to his hotel, and two years later, when he had paid \$700 to secure an entry, he found it plundered, and \$1100 in notes and silver missing. He was offered the return of his property on payment of \$20,000. Meanwhile, his landlord is suing him for 22 months' back rent.¹

25. *Extortion from a British Firm in Hankow.*

In January 1928 Centrosojus, a British firm, with an entirely Russian staff, trading in tea at Hankow, was called upon to pay a 10 per cent. levy on its turnover to the local government, amounting to one million taels. It was pointed out that such a levy would ruin the firm. When it continued to refuse to pay, the entire staff was arrested and detained, its factories sealed up, and all communication with it interrupted. Shortly afterwards the staff were released, but

¹ *Hong Kong Daily Press*, April 2, 1926. See also a fuller account of this case by the present writer, *Law Quarterly Review*, October 1927, pp. 533-535. The following extract from *The Times* Tientsin Correspondent, on November 8, 1927, describing Feng Yu-hsiang's occupation of Honan, requires no comment:

"When other disturbed provinces were settling down to some sort of order during August and September, and both missionaries and traders were returning cautiously and in small numbers to the interior, pillage and massacre of the Chinese were being carried on in Honan, followed by the looting and burning of missionary properties by Feng's troops. The Massacre at Changtefu on August 28, when nearly 1000 non-combatants were slain in the streets by the Kuominchun, was followed by the burning of many buildings and the slaughter of villagers for three miles on either side of the railway all the way from Changte to Weihwei.

"The City of Weihwei boasts a cotton mill, and in the mill the troops killed 200 workmen who were said to be members of secret societies. About September 1 these soldiers of Feng's Third Army began to loot the residences of the missionaries of the United Church of Canada. There are 12 of these at Weihwei. On September 4 they burned the largest residence, which was used as a school for the missionaries' children, with its contents. After that they completed the looting of eight other adjoining residences, and also the hospital and dispensary. The contents of these buildings were carried out to the bank of the adjacent river, and there sold for about 3s. apiece. Care-takers left by the missionaries to look after the buildings and property were driven out of the compound, which was occupied by the soldiers. Wealthy Chinese homes have also been looted. The use of paper money is enforced on the people. The 'Red Spears' and other gangs are fighting throughout Northern Honan, and are waylaying and robbing travellers."

fresh pressure being applied in February, the firm was compelled to pay taels 200,000.¹

26. *Two Views of Negligence*

In March 1928 the Peking correspondent of *The Times* reported the following case : a Peking barber was run down by a train whilst his motor car was upon a level crossing, the accident being due to the negligence of the gate-keeper. Compensation was refused (although the railway authorities made an inadequate offer to repair the car). Shortly afterwards the head of the railway police was run down in his motor car by a tramcar in a public street whilst attempting to cross with the tramcar in view. He claimed a new car and damages from the tramway company, and when this was refused he blocked the line with the wreckage of his car, which was guarded by soldiers with fixed bayonets, until compensation was forthcoming.

Early in 1928 the Nationalist Government issued a set of regulations relating to banks, providing for the unrestricted access of government officials to books, documents, archives, funds, securities, and to all information relating to organisation.²

The above cases are merely typical of innumerable others occurring regularly in China. Another and more recent type of interference will now be considered—that of Labour Unions. Before 1925 the activities of these were political, and they made comparatively little attempt to undermine the work of the Chinese courts. In 1925, however, following the inauguration of the boycott against Great Britain at Canton, the Labour Unions temporarily usurped legislative, administrative, and judicial powers in South China. The “All China General Labour Union” and the “Canton-Hong Kong Strike Committee” published a series of regulations cutting off all trade between the two ports, and boycotting all British ships and goods. Article 6 of these regulations reads :

“This regulation has been signed and promulgated by the four Chambers of Commerce in association with the Canton-Hong Kong Strike Committee. From the date of publication, until the Canton-Hong Kong Strike Committee is vested with official authority to blockade, *anything which infringes the preceding Regulations will be uniformly and entirely confiscated (confiscation can be carried out only after being sanctioned by a Strike Committee).*”³

No protest was made by the Canton Government against this action, and after a period the Labour Unions became bolder,

¹ *The Times*, March, 1928,

² *Ibid.* March 26, 1928.

³ *Report of the Hong Kong General Chamber of Commerce*, 1925.

and established their own judicial system, before which persons accused of breaches of their regulations were brought, tried, and sentenced. They also established their own prisons, and in some cases inflicted capital punishment. Even foreigners were brought before these tribunals.¹ The following are a few examples of the consequences of this extraordinary situation :

1. *Confiscation of the Anglo-Chinese College at Swatow*

The anti-British boycott rapidly spread from Canton to Swatow, and in August 1925 it was necessary for the Principal to notify parents that the work of the College would be suspended. On September 5th a statement appeared in local newspapers that former students of the college had organised themselves into a new school, entirely independent of British control, and that they would attempt to secure the College buildings (the property of the English Presbyterian Mission) for their activities, alleging the Mission to be "common property." After securing a statement from the Students' Association, recognising the proprietary rights of the mission, the Principal allowed the new organisation to enter into possession. They employed their new-found liberty of action to lead an anti-Christian movement in the locality. At the end of term, in spite of the fact that nearly all the students had left, the promoters of the new scheme continued the possession. Accordingly, on February 1st, 1926, the Mission resumed occupation, requiring the remainder of the teachers and students to leave. In reply, they invoked the assistance of the local police. The Mission protested to the British consul, who interviewed the Commissioner for Foreign Affairs, who informed him that the control of the property by the Mission had been "cancelled." Later, boycott pickets compelled the missionaries to withdraw from the building, and arrested the caretaker of one of the mission buildings. He was taken to the headquarters of the Seamen's Union and beaten, his release being purchased for \$200. A subsequent commissioner for Foreign Affairs refused to re-instate the Mission, on the entirely unsubstantiated grounds that the mission had obtained a grant of the property from a dying man by fraud, and that the property should therefore "revert" to a body of teachers and students, which had sprung into existence expressly to take possession.²

2. *Closure of the Canton Hospital*

This hospital was founded by Dr. Peter Parker, and is the oldest medical institution in the Orient. Until recently, it was controlled by a Sino-European Directorate. An organisation known as the

¹ The author has the pleasure of including among his friends one British subject who spent a night in a Canton strikers' gaol.

² Personal statement of Mr. H. F. Wallace, Principal of the College.

Workers' Union presented a number of demands to the Directors, and compelled the employees of the Hospital to join the Union. The Hospital accepted some of the demands, but refused others, which tended to impair the organisation of the hospital, and thereby endanger the lives of patients. In consequence the hospital was surrounded by a noisy crowd of members of various unions, and a strike of all employees was organised. The hospital requested the Canton Government to settle the matter, and limit the interference of the Unions. When this was refused, the staff of the hospital, after continuing as long as possible, was compelled to close, after the Unions had prevented all food supplies from reaching the hospital for several days.¹

3. *Seizure of the Wuchow Mission*

This mission is owned by the American Southern Baptist Missionary Society, and maintains the Stout Memorial Hospital at Wuchow. In March 1926 the Hospital authorities were requested by an organisation of Chinese, terming themselves the "Kwangsi Chinese Christian Promotion Association," to convey to them the property of the hospital, and the management of its finances. This was rejected. Shortly afterwards, a strike of all Chinese employees was organised, and the cashier was threatened with death unless he surrendered the funds of the mission. This was not done. All provisions were prohibited from entering the hospital. An appeal was made to the military authorities and to the Secretary of Foreign Affairs, but both refused to interfere with the activities of the Unions. Finally, on March 29th, the Superintendent of the Hospital decided that it must be closed, and it was accordingly sealed up by the American authorities, all patients being removed and baggage carried away without any assistance from outside. The foreign staff were evacuated in the U.S.S. *Pampanga*, the Police Department being paid \$300 a month to protect the property.² When the *Pampanga* visited Wuchow in May, the seals were broken, a large part of the property was removed, and some of the rest destroyed.

4. *Case of Sim Kye-lim*

Sim Kye-lim, a merchant of Swatow, and a British subject, was attacked by armed pickets on August 16th and dragged with ropes to the headquarters of the Strike Committee. He was charged with visiting a British firm during the anti-British boycott. In reply, he produced a permit from Hsu Fu, the Executive Delegate. Notwithstanding this, he was put into a dirty cell, and a heavy chain was padlocked tightly round his neck so that he could hardly swallow. He could not sleep, and he was fed with dirty scraps from his gaoler's

¹ Statement of the Canton Hospital authorities.

² Statement of Dr. G. W. Leavell, Superintendent of the Hospital (*Hong Kong Daily Press*, April 27, 1926).

table. After four days he was sick with fever, and in consequence the chain was removed from his neck. On the third day he was again interrogated by five persons who compelled him to sign a document, under threat of shooting. He was then sent back to a cell 18 feet by 12 feet, in which twenty other persons were incarcerated in the most filthy surroundings. Here he remained until September 2nd, when he was offered the choice of paying \$2000 or of being sent to Canton for execution or indefinite imprisonment. On his refusal, he was threatened with revolvers, and tortured by the chain being twisted so tightly round his neck that strangulation seemed imminent. In this way \$800 was extorted from him, and he was then released in consequence of the representations of the British Consul General at Canton. This case was reported to the Extraterritoriality Commission, but does not appear in the Report.¹

5. *Case of Teo Yee-swee*

Teo Yee-swee, another British subject, was in business for 24 years at Swatow, before the anti-British boycott. Trouble arose in 1926, when Teo, as a British subject, refused to pay certain taxes imposed by the local authorities. Later, at 12.30 a.m. one morning, his premises were visited by gang-robbers, who took property to the value of \$2000. An employee was sent for the police, who arrived at 3.30, and arrested another servant as a bandit. Later Teo and three coolies were taken to the police station and detained. He was released a little later, after his premises had been searched and guns and coolies' clothes confiscated. Some time afterwards, the authorities decided to widen the road where Teo's shop was. This occupied about 500 square feet, and the Mayor offered \$30 per hundred square feet. It was pointed out that the Mayor had recently obtained \$420 per hundred square feet for land in the same area, and Teo offered to accept \$300 less 25 %, but the Mayor refused this offer. A boycott was organised against Teo's business, his employees were compelled to leave, and his electric light was cut off. At length the Mayor increased his offer to \$150 per hundred square feet. Agitation, however, had compelled Teo to leave the colony, and the whole matter was in the Consul's hands when the report was published.²

6. *Seizure of Petroleum Stocks*

On September 2nd, 1926, the Strike Committee at Tonghing, Kuangtung, seized the whole of the stocks of the Compagnie Franco-Asiatique des Pétroles, Haiphong, without legal justification, and announced their intention of selling it by auction.³

¹ The preceding account is drawn from the letter of Mr. Kirke, British Consul at Swatow, to the British Consul-General at Canton (reprinted in the *South China Morning Post*, September 1926).

² *South China Morning Post*, October 18, 1926.

³ Telegram, *China in Chaos*, p. 15.

7. *Fining of a Norwegian Steamship*

At the beginning of September, the Norwegian steamer *Escondico* was "arrested" by strike pickets, and detained, the captain being informed that the vessel was fined \$15,000 for calling at Hongkong a year before. The vessel had made the call to put ashore the captain, who was dying, and who died next day.¹

8. *The Hong Kong, Canton and Macao Company's Wharf at Canton*

This wharf was seized by strike pickets in the early days of the anti-British boycott at Canton, and used as a headquarters, and also as a base from which to fire at shipping in the river. It was held on a lease by the British Company, which had protested against the occupation, but the Nationalist Government had refused to disturb the strikers. At the end of August 1926 British bluejackets reoccupied the wharf, and ejected the strikers.

9. *Murder of a Woman in Shanghai*

On March 17th the wife of Wang Ah-foh, Chief Inspector of the Shanghai Tramways, was murdered at her house by two armed men believed to be Labour agitators. The real object of the crime was Wang Ah-foh himself.²

10. *Raid on the British Concession at Hankow*

On December 24th, 1926, strike pickets raided a room in the British Concession at Hankow, and carried off a foreman of Municipal Council Coolies. His release was effected by a squad of Sikhs, who in turn arrested the pickets. They were brought to the British Consulate and released with a caution.³

11. *Looting of the China Inland Mission, Loping*

In January 1927 the China Inland Mission at Loping, Kiangsu, was occupied by the Workmen's Guild, the missionaries being driven out. The premises were thoroughly looted, and what was not destroyed was taken into the courtyard and burned.⁴

12. *Massacre at Changsha*

Towards the end of 1926 the premises of the Y.M.C.A. at Changsha were appropriated by "The Youth Society," the Chinese secretaries

¹ Telegram, *China in Chaos*, p. 15.

² *Ibid.* p. 20.

³ *Ibid.* p. 23.

⁴ Statement of the Rev. A. E. Beard (*ibid.* pp. 44-45).

being compelled to pay sums of money for release. On April 17th, 1927, workmen and students seized seventy people, some gentry, some Christian, dragged them to the magistrate's yamen and executed them.¹ At Yochow a Chinese pastor, Cheng Tso-chin, was stoned to death by farmers.²

13. *People's Courts at Kinkiang*

In April 1927 twenty farmers visiting Kinkiang were seized by strike pickets, and charged with being implicated in riots which led to the destruction of the Labour Union's Headquarters and the death of two pickets. Twelve were released. Two of them bribed the magistrate to compel their release. The remaining six were brought before a People's Court, presided over by the magistrate. Admission to the court was only open to members of the Labour Union. After some species of a hearing, the audience were asked to pronounce sentence. They were pronounced guilty and were shot before a crowd of 10,000, death occurring only after several volleys had been fired.³

14. *Further Looting by Labour Unions*

In the early part of 1926 the mission stations at Changshan, Chuchow, Lauche and Yenchow were taken over by the military and Labour Unions in concert and looted.⁴

Incidents of which the foregoing cases are only typical examples illustrate to what extent lawlessness prevails at present in China. To this should be added the circumstance that wide areas in China are at the mercy of large organisations of bandits, who pillage and murder with impunity. The Extraterritoriality Commission accordingly notes, with studied restraint, that the Laws of China are not by any means universally applied.⁵ It should not be overlooked, however, that a number of these cases occurred in times of exceptional difficulty, due (1) to the prolongation of the civil war, which has raged continuously in China since 1911, and (2) to the outburst of anti-foreign feeling during 1925, 1926, and the early part of 1927. On the other hand, even during the Empire, local officials were not by any means adequately controlled by the Central Government, and there is as yet no indication that this state of affairs will be changed under the Republic, while, as far as the second point is concerned, although it may be assumed that any responsible Chinese Government will attempt to repress outbursts of anti-foreign

¹ *North China Herald*, May 14, 1927, p. 284.

² *Ibid.*

³ *Ibid.* May 28, 1927, p. 368.

⁴ *Ibid.* June 4, 1927, p. 415.

⁵ *Report*, pp. 87-88.

feeling, leading to attacks on foreign lives and property, here again the record of the Chinese Government, Imperial or Republican, is far from completely satisfactory.¹ In addition to the limitation of authority in the ways described above, many provincial authorities promulgate their own laws in open defiance of the Central Government. The curtailment of this activity depends, of course, upon the restoration of order, and the resumption of governmental control by some single Chinese party.

Again, in spite of the provisions of the Chinese codes, bail is not by any means generally granted. On this point the Commission notes :

“ In an order of the 10th of May, 1921, the Ministry of Justice complains that in spite of continuous instructions to the contrary the illiberal interpretation of the bail provisions has brought about an overcrowding of the detention houses to the jeopardy of the lives of the people who have not been convicted of any crimes, and orders that in future the bail provisions should be more liberally interpreted. In view of the importance which is universally attached to the granting of bail to persons not yet convicted, it is believed that their rights in this respect are not properly safeguarded in practice and that it would not seem advisable to give as much discretion to the judicial authorities as now exists with respect to the withholding of bail.”²

The Commission also notes that torture is still used to extract evidence, and as a punishment, but not in the modern courts. The cases already set forth will have given some indication of this, and the Commission notes that consular reports fully substantiate these observations. It also notes that although the death penalty in China is by strangulation, shooting being permissible only for robbery, insurgency, and brigandage, shooting and decapitation are continually employed by the military.³ To this it should be added that the barbarous custom of exhibiting the heads of persons so killed still survives. This, too, has been indicated with regard to the suppression of disorder among the troops at Peking. The same practice has been followed on several occasions at Shanghai and Tientsin. At an execution of three men at Tientsin in September 1926 three strokes were necessary for the first man, and a desperate struggle ensued, the second prisoner

¹ For the period 1842-1856, see Chapter VI.

² *Report*, p. 88.

³ Pp. 88-89.

being decapitated only after several efforts. The third man was executed by a guard.¹

The homicide laws, so long a matter of contention between foreigners and Chinese, are still unsatisfactory in their application, as the following cases indicate :

1. A German doctor, practising in Tientsin, was charged under Chapter XXVI, Article 326, of the Chinese Criminal Code with causing the death of a boy on whom he had operated. The operation was performed under an anæsthetic, properly administered, on June 3, 1922. The boy died on the table through a weakness of the heart which had not been apparent at his examination. A Chinese coroner examined the boy after death, and declared that the boy died from the anæsthetic, and not from the operation. Nevertheless, a prosecution was instituted, and the doctor was condemned to pay a fine of \$2000 on July 6. He appealed to the higher Provincial Court, which upheld the verdict, and thence to the Supreme Court, which ordered a new trial on December 14, 1922. This took place at the Provincial High Court in April 1923. The court upheld the previous decision, but reduced the fine by one-half. Again the case went to the Supreme Court, which, on August 9, 1923, once more ordered a fresh trial. The third judgment of the Provincial High Court, delivered on May 12, 1924, again condemned the accused to pay a fine of \$1000. On October 27 still another trial was ordered by the Supreme Court, and the case was eventually disposed of by the amnesty of the Chief Executive of January 1925. Concurrently, a civil suit for damages was being heard. This dragged on from June 1922 to January 1925. Much of the expert evidence of the German doctor was rejected, although that of the coroner (who was a barber), containing a good deal of nonsense from the juridical point of view, was accepted. No distinction was drawn between the cause of death and the allocation of the blame, if any. The old Chinese notion of responsibility survived sufficiently to attach the doctor inseparably to the death. Finally, in the hearing in May 1924, much important evidence favourable to the accused was deliberately rejected.²

¹ *South China Morning Post*, October 23, 1926.

² This case and the following one are fully reported in the issues of the *Peking and Tientsin Times* of the period.

2. Another German doctor was charged, under the same section of the Criminal Code, with causing the death of a female patient. The woman had undergone a successful operation for an internal complaint, and had progressed satisfactorily for seven days, when a friend of her husband called to see her. According to the evidence, she had a violent quarrel with this man. As a result, her heart collapsed, and, notwithstanding all efforts to save her, she died on the following day. In this case the maximum penalty of \$2000 was imposed at successive trials. It has been stated that the verdict against the accused in this case was mainly due to the mistranslation of the evidence of another foreign doctor.

In the sphere of contract matters are equally unsatisfactory, Tientsin is the centre of a large export trade in raw cotton from a wide area in North China. Foreign exporters contract forward, according to custom, in July or August—when the prospects of the year's cotton crop are fairly well known—for delivery from October to December. In 1923 the crop was above the average, and contracts for large quantities were made at 23 taels to 28 taels per picul. The Tokyo earthquake occurred in September, and prices began to soar, eventually touching 43 taels per picul. The Chinese dealers repudiated almost all the forward contracts with foreign exporters in order to meet the Japanese demand. Appeals to the civil governor, the police commissioner, and the Chinese Chamber of Commerce were in vain, and when the foreign merchants sought a remedy in the Courts, the civil governor ruled that the forward purchase of cotton constituted an illegal gambling transaction, and nothing was recovered.

The absence of a bankruptcy law in China results in the utmost confusion in cases of large bankruptcies, even if there is no external interference. Thus, *The Times* Tientsin Correspondent, commenting on the bankruptcy of Henan Chi, already mentioned, observes :

“ Chinese banks themselves, which fell over one another in the attempt to get hold of the assets, share the blame for the failure. Thus, the Chung Yuan Bank, which had a capital of only \$400,000 (nominal), is a creditor for a loan of \$950,000 to the Union Trading Corporation. Wang Ping Lo was chairman of the Chung Yuan Bank as well as of the Union Trading Corporation. He explained that he trusted implicitly in Henan Chi. Some of the Tupan's army officers are shareholders in the Chung Yuan Bank. Henan Chi started with

\$50,000 capital, increased it to \$75,000, then \$100,000, then \$300,000, and finally dealt in millions. It is now stated that the sum involved in the failure amounts to between \$5,000,000 and \$6,000,000. Peking, Tientsin, Hankow, Shanghai and Dairen establishments of the Union Trading Corporation are being similarly treated by grasping creditors, despite the efforts of the committee of creditors to have everything placed under guard. The whole business is as lawless as the country generally. There is no Bankruptcy law by which a Liquidator might be appointed and the difficult question of priorities might be solved. All that can be done has been done ; a committee of five creditors to be assignees of the estate. Meanwhile if the military creditors can rob the rest, they will undoubtedly do so.”¹

The following extraordinary case is vouched for by Mr. Frank H. B. Harmon, a missionary of the Shantung Christian University, Tsinan.² A small Chinese house with a thatch roof was burned down. Its owner brought an action against the local electric light works, asserting that he himself had seen a ball of fire as big as his arm jump from the electric wires to his roof. The nearest wires were fifteen feet away. The wire, triple plated, was absolutely intact. A coffin, containing the body of the owner's mother, was slightly charred, and the owner, on the strength of this, asserted that the electricity had burned the house and his mother. The foreign manager, a German, being called, was informed that he was personally responsible for the damage done (another example of the doctrine of responsibility). The manager asserted that it was impossible for a spark to travel fifteen feet, and, moreover, the wire was unbroken and in perfect condition. His request to call two foreign experts was refused. The police superintendent from the local station had signed a statement that the current was switched off at the time of the fire, but the claimant was allowed to put in a statement by the switchman concerned that he had himself pulled out the switch. The case was still *sub judice* at the time of the letter.

In a similar case at Soochow, in March 1926, a live wire fell, during the course of a fire, inside the burning house, electrocuting a fireman. The local electric light company was held responsible for the man's death, and was compelled to pay a large sum by way of compensation.

In a second case, cited by Mr. Harmon, a German, proceeding

¹ *The Times*, September 15, 1927.

² Letter to *The Times*, dated December 18, 1925, published in January 1926.

to his office, was struck by a stone thrown by a small boy, who took refuge in a neighbouring house. From a policeman standing by he obtained the name and address of the father, to whom he sent a letter, asking for an apology on behalf of the son. The next day the father called, saying he had put the matter in the hands of the police. Eight days later the German received a summons to court. Here he was charged with having thrashed the boy to the point of death. The boy was stripped, and it was certainly evident that he had been badly thrashed. The German asked leave to call a foreign doctor to substantiate his contention that such a beating could not possibly have been given by a stick so small as that carried by him. Permission was refused, on the ground that Chinese doctors, just as good, could be supplied. His case was postponed and the German was locked in a small room which was so filthy that he asked leave to stay in the yard. Permission was granted. After a wait of two hours, he was released, on production of guarantors for his future good behaviour. When his case came up again he produced the policeman as a witness, and was released.

As far as Chinese courts are concerned, the Commission was of the opinion that the modern courts worked on the whole satisfactorily, but observed that there was only one modern court of first instance for nearly four and a half millions of population. Even of magistrates' courts there is only one for every 300,000 people. Moreover, there are only 1293 trained judges in China—a number insufficient to supply even the modern courts properly.¹ More than half of these have been trained abroad.² Nevertheless, their salaries appear to be inadequate,³ and even the payment of these is irregular, many of the provincial judges being entirely dependent on court fees. As a result, not only is the Ministry of Justice losing its control over the judiciary, but also the best men are being deterred from entering the service.⁴ The magistrates' courts are very far from satisfactory, and the magistrates are too ready to hand over cases to the military for trial. On December 5, 1923, the President complained that almost under the walls of Peking a magistrate had detained a man in prison for six years without delivering a judgment.⁵ As far as police tribunals were concerned, the Commission had no

¹ *Report*, pp. 89-90.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.* pp. 90-91.

⁵ *Ibid.*

opportunity of examining them, as the Chinese Government refused facilities, on the ground that these tribunals were under the supervision of the Minister of the Interior. Nevertheless the Commission was convinced that the administration of justice in these tribunals was not satisfactory.¹ In this connection two cases occurring in Canton in January 1927 merit brief notice, as they relate to the police powers possessed by certain public services. A Chinese in the service of a foreign resident, being sent into the city to purchase a bottle of wine, was taken into custody by a plain-clothes officer of the Tobacco and Wine Revenue Bureau. He was taken to the office of the Bureau and imprisoned, without any opportunity of communicating with anyone. Another prisoner, however, on being released, informed the foreign employer, who proceeded to the Bureau and asked for his servant's release. This was refused. Meanwhile, the servant had been given no food (though he had been in custody for over five hours) and no provision had been made for sleeping. A bribe was paid to permit food and blankets to be given to him. The following morning the responsible official required two Chinese firms as security before the servant (who was thirteen years old) could be released on bail. One was procured, but there was some difficulty concerning the other, and by the time the second guarantor was secured, all responsible officials had disappeared. Trial was to occur in the afternoon, after a "fee" of \$2 had been paid, but without explanation was held over for two days. \$3 more were paid, however, and the trial then occurred, a fine of \$10 being levied, though on what grounds the employer remained in ignorance. The boy was then freed.² About the same time a Chinese-owned oil company in Canton, registered in the State of Delaware, was charged with allowing oil to be withdrawn from its go-down before tax had been paid. The Chinese manager was arrested, and kept a prisoner for a week in the office of the Chinese superintendent of Customs, until bail was found to the amount of \$1000. At the trial no accusers appeared, and no evidence of any sort was offered in support of the charge; but at the time of the report bail had not been returned and the matter had dropped.³

As far as police activity in general is concerned, the Commission was of the opinion that it was unsatisfactory, adding:

¹ *Report.*

² *South China Morning Post*, February 1927.

³ *Ibid.*

“ Various complaints have come to the attention of the Commission concerning alleged abuses of their powers by the police. The fact that the police can arrest persons for the slightest infractions, combined with the fact that, after arrest, they can, by exercising their judicial or procurational functions, detain them for long periods at their discretion, lends credence to these complaints. Further, the police exercise absolute discretion in the matter of admitting or excluding the public (friends and relatives) during detention, trial, and subsequent detention ; in some cases they assess costs against injured parties which are usually elsewhere borne by the State ; and they even arrest small children in minor contraventions.” ¹

Numerous examples of police irregularities have already been given in considering other points. To these, four more, each typifying a different class of irregularity, will now be added :

1. *Case of Mrs. Harvey L. Decker*

Mr. Harvey L. Decker, an American citizen, was manager of the Canton City Transportation Company, duly registered. On October 1st, 1924, the Company was moved to other premises in the same block of buildings as those it had previously occupied. On October 3rd the company received a notice from the police asking the Company to register its change of address. The following day, a policeman called in person to say that registration must take place soon. Mrs. Decker therefore offered to go with Ah Chew, an employee, to the police station to put matters in order. When she arrived there, Mrs. Decker was asked why the police tax had not been paid, to which she replied, that, as it was a foreign company, there was no liability. Moreover, the usual arrangement had been to pay the landlord a fixed monthly sum, and to leave him to meet all charges. The landlord was then sent for, but he was out. Mrs. Decker therefore rose to go, and had reached the car in which she had driven to the station, when a crowd of policemen and coolies appeared, and roughly dragged both her and the employee from the car, into a room in the station, where they were detained and guarded by policemen with fixed bayonets. Outside the bars were other policemen and onlookers, who subjected the two to a constant torrent of abuse. Mrs. Decker was prohibited from communicating with the American Consul, and shortly afterwards transferred to another room, where she was interviewed by another police official. Later they were retransferred to the original cell. After two and a half hours, Mrs. Decker succeeded in informing her husband of her predicament. He accordingly appeared at the station, and an effort was made to detain him also, but he escaped, and went for the American Consul. This had the effect of causing the police to take Mrs. Decker to the Central Police

¹ *Report*, p. 93.

Station. This was a mile away, and the two prisoners were compelled to journey the entire distance, in a rickshaw, surrounded by armed police. They arrived at 4 p.m., the American Consul appearing at the same time, and after a prolonged conversation Mrs. Decker was released. It will be noticed that the entire episode constituted a violation of the extraterritorial rights of American subjects.¹

2. *Case of the Russian Students' Union at Shanghai*

In the Chinese city of Shanghai an association exists known as the Russian Students' Association. It is non-political, and no intoxicating liquor of any description is served on the premises. Early in July 1926 an intoxicated Russian, not a member of the club, entered a Chinese shop in the vicinity, and demanded vodka. On being refused, he became violent, and the police were summoned. He accordingly ran away, paused for a moment under the porch of the Russian Students' Association headquarters, and then disappeared round the corner. Shortly afterwards, eighteen Chinese policemen, armed with rifles, entered the premises of the Association, seized the four principal members of the Club, dragged them violently into the street, flogged them with sticks and rifle-butts, and then marched them to a police station in the Chapei district. Further assaults were committed there, following which the students were locked in a cell. Meanwhile one of the remaining students had gone to the Bureau for Russian Affairs, which refused to do anything. The following morning, the Commissioner for Foreign Affairs was informed of what had happened, and the students were released, no charge of any sort having been preferred against them.²

3. *Case of the Harbin Convicts*

On July 20th, 1926, twelve prisoners escaped from a gaol at the corner of Kommercheskaya and Kitaiskaya Streets at Harbin. An alarm was raised, and a pursuit organised. Two of them were brought down by shots from sentries, who then proceeded to finish them off with further shots as they lay helpless in the street. The remaining ten proceeded along Magasinnaya Street, followed by policemen firing steadily. At House No. 6 a third convict was brought down, but he crawled into the gateway of No. 4, where he was killed by another shot. A fourth convict took refuge in No. 4, under a bed, from which he was dragged and shot. A fifth was caught by a Russian policeman at the corner of Kommercheskaya Street, and taken back, unharmed, to prison. The rest reached Novogorodnaya Street, and there separated. Later, a sixth was caught and brought back. Of the rest, others were caught and killed in the neighbourhood of the Bazaar and the Kirin Bureau. A Russian doctor named Migdisoff

¹ *South China Morning Post*, October 7, 1924.

² *North China Daily News* and *South China Morning Post*, July 1926.

examined the bodies of those killed and found that each of them had received at least ten bullets. Of the escaped prisoners, two were Tartars, and ten were Russians. Several of them were under sentence for long terms for murder, but the majority were minor criminals, and some had only a short time still to serve.¹

4. *Case of Mr. William M. McKay*

In October 1927 Mr. William M. McKay, while motoring outside the International Settlement at Shanghai, knocked down a Chinese child, whom he took to a foreign hospital. After treatment, she was able to leave. In defiance of extraterritorial rights (Mr. McKay being an American citizen) he was arrested by Chinese police, and detained for four days in a Chinese police station until the American Consul demanded and secured his immediate release. Apparently there have been other similar cases, where American subjects have been illegally detained in this way by Chinese police.²

Of Chinese prisons, a good deal has already been said in cases set forth above. The Extraterritoriality Commission found the modern prisons,³ on the whole, satisfactory, but found that in some there was insufficient accommodation for the prisoners. It also found that salaries of prison officials are too low, and that even then there was a good deal of irregularity in payment. It also notes that a Mandate of the Ministry of Justice of May 10, 1921, complained of the unhygienic and unhealthy conditions prevailing in prisons, and resulting in epidemics among prisoners, and that prisoners at Tientsin sometimes go without food for lack of funds ; that a similar Mandate, of August 5, 1926, complains of similar conditions, but attributes them to lack of financial support ; and that a Presidential Mandate of February 13, 1923, complains of numerous abuses in the district prisons, and adds that prisoners sometimes die in consequence.⁴ Of the conditions prevailing in Kwangtung prisons, the scheme for reform in 1926, already set forth, is a sufficient indication.

¹ *North China Daily News*, July 1926, reprinted in the *South China Morning Post*, August 3, 1926.

² *North China Herald*, October 29, 1927, clxv. p. 193.

³ A list of them appears in app. v. of the *Report*.

⁴ *Report*, pp. 92-93.

CHAPTER X

THE NATURE AND EXTENT OF EXTRATERRITORIAL JURISDICTION IN CHINA

AUTHORITIES

Report of the Extraterritoriality Commission. China Order in Council, 1925. Extraterritorial Cases. China (Kashgar) Order in Council, 1920. Hong Kong University Law Journal, Vol. I, No. 2 (January 1927). The Foreign Jurisdiction Act, 1890. Foreign Jurisdiction (Military Forces) Order in Council, 1927. The Merchant Shipping Act, 1894. Wellington Koo, Status of Aliens in China. Willoughby, Foreign Rights and Interests in China. Hall, International Law (Eighth Edition). Oppenheim, International Law (Third Edition). Piggott, Extraterritoriality. Moore, Digest of International Law, Vol. II. Kotenev, Shanghai : its Municipality and the Chinese. Lanning and Couling, History of Shanghai. Morse, International Relations, Vol. III. Takahashi, International Law during the Chino-Japanese War. Hershey, International Law during the Russo-Japanese War. Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co. The Laconia. Imperial Japanese Government v. P. & O. Steam Navigation Co. McDonald v. Anderson (Tientsin). Casdagli v. Casdagli. Attorney-General for Hong Kong v. Kwok-a-Sing. The Maori King.

I. PROVISION FOR EXTRATERRITORIAL JURISDICTION BY TREATY POWERS

It has already been indicated in an earlier chapter that the "most favoured nation" clause was not extended to extraterritorial provisions of the treaties, and that the various systems of the Powers therefore exhibit certain differences. They may, however, be classified into three groups. The treaties of Great Britain and the United States alone confer the right upon those States to be represented by assessors at trials in which their nationals are plaintiffs, in Chinese courts. Theoretically the Chinese had a similar right, but it has not been exercised. Secondly, in the treaties of Japan, Brazil, and Mexico, each con-

tracting state has exclusive jurisdiction over its own nationals, there being no right to delegate assessors to watch the proceedings. Lastly, the remaining Powers have followed the French system, which accords exclusive jurisdiction to each contracting party over its own nationals in criminal cases, but in civil suits the foreign consul and the Chinese magistrate jointly settle the disputes in accordance with equity, and by arbitration rather than by strictly legal procedure. As far as Great Britain and the United States are concerned, it must be noticed that assessors have not been permitted to watch the proceedings in the modern courts of China,¹ claims of British and American subjects, where adherence to the procedure of the treaties is insisted upon, being heard in the courts of the district magistrates. It is necessary to add that in this instance China's attitude is fully in accordance with the spirit of the Chefoo Convention (in which the position of the foreign assessor is defined), since the convention only contemplated the continuance of the right so long as Chinese courts were clearly incompetent to administer justice to the foreign plaintiff without the scrutiny of an assessor.

Great Britain.—The exercise of British jurisdiction in China now depends upon the Foreign Jurisdiction Acts, 1890–1913, and the China Order in Council, 1925, which consolidated and amended numerous previous Orders in Council.² The Order of 1925, however, does not apply to Kashgar, in respect of which the China (Kashgar) Order in Council, 1920, is still in force. Jurisdiction is exercised by means of a Supreme Court and provincial courts, and extends to all civil and criminal cases, including divorce of British subjects domiciled in China. The Supreme Court, including two trained judges and a professional staff, sits normally in Shanghai, but it may sit anywhere in China. It has full jurisdiction, civil and criminal, and may sit alone, with assessors, or with a jury. Divorce and certain criminal and civil matters may only be tried by the Supreme Court. Provincial courts exist for each consular district, presided over by the consular officer in charge of the district. In civil cases a provincial court may hear cases involving any amount, subject to the right of the Supreme Court to withdraw them from its jurisdiction, and provided that, in cases involving subject-matter more than £500 in value or difficult points

¹ *Report of the Extraterritoriality Commission*, p. 16.

² For a list of these see China Order in Council, 1925, Second Schedule.

of law, a report must be sent to the Supreme Court. It sits alone or with assessors. Criminal jurisdiction is limited to cases where the punishment does not exceed a fine of £100 or twelve months' imprisonment ; but even these may be withdrawn by the Supreme Court. On the criminal side, a provincial court may sit summarily or with assessors. There is a special British police court at Shanghai for the trial of minor offenders. Appeals from decisions of the Supreme Court in civil cases, or from decisions of provincial courts in civil cases, where the sum in dispute amounts to £25 or upwards, or in other civil cases in provincial courts where leave to appeal is given either by the provincial court or by the Full Court, or in any criminal case in the provincial courts or Supreme Court (including summary trials where questions of law are involved, and where leave to appeal is given by the Full Court) are heard by the Full Court, which usually comprises three judges (the additional judge being the Chief Justice or other judge of the Supreme Court of Hong Kong), but may consist of two judges, or even one judge. From this court, in civil cases, there is a further appeal to the Judicial Committee of the Privy Council, where the amount in dispute is £500 or upwards, and in other cases, by leave of the Full Court, where questions of great general or public importance are involved. In criminal cases leave to appeal is required from the Privy Council. Sentences of criminal courts are carried out in China, but criminals may be sent to Hong Kong or elsewhere to serve sentences. Capital punishment is carried out by hanging, but requires confirmation by the British Minister to China. Mitigation and remission of sentences are made by the Secretary or the British Minister on a report from the Supreme Court.¹

The United States.—American consular jurisdiction in China was first regulated by statutes of August 11, 1848. It was amended and extended by Acts of 1860, 1866, 1870, 1874, and 1876. In 1878 these Acts were consolidated, and they were amended by an Act of 1906, creating the United States Court for China, and by the Act of 1920 merging the consular jurisdiction of the consular judge for the district of Shanghai with the functions of the Commissioner of the United States Court for China. There are also a number of special Acts relating to particular topics arising out

¹ *Report*, pp. 101-102. The system in force at Kashgar is considered in Section II.

of American extraterritorial jurisdiction in China. There are eighteen American consular courts in China—namely, at Amoy, Autung, Canton, Changsha, Chefoo, Chungking, Foochow, Hankow, Harbin, Kalgan, Mukden, Nanking, Shanghai, Swatow, Tientsin, Tsinan, Tsingtao, and Yunnan-fu. Of these, all except Shanghai (where the Commissioner of the United States Court for China sits) are presided over by the Senior Consular Officer. Consular courts exercise jurisdiction in civil and criminal matters, including probate. In civil cases, however, their jurisdiction is limited to cases where the amount involved does not exceed G.\$500. In criminal cases their jurisdiction extends only to those offences where the maximum punishment does not exceed a fine of G.\$100 or sixty days' imprisonment, or both. They have also power to arrest, examine, and discharge accused persons in other cases, and to bind them over to appear before the United States Court. Probate jurisdiction is limited to estates of G.\$500. The United States Court for China was created in 1906, in order to replace the jurisdiction in important cases of consuls—whose training was not necessarily legal—with a professional staff, and to replace the existing system of appeals to the Minister at Peking, and thence to the Federal Circuit Court for the District of California, with a different procedure. The court occupies practically the same position as an American district court. It comprises a judge appointed for ten years, a district attorney, a marshal, a clerk, and a commissioner, whose tenure of office is determined by the President. It sits usually at Shanghai, but is required by the statute to sit “at stated periods” (once a year) at Canton, Tientsin, and Hankow. It may also sit in any other place permitted by the treaties when the judge so determines. The court has exclusive original jurisdiction in all cases not within the jurisdiction of the consular courts, and concurrent original jurisdiction in those within the jurisdiction of the consuls. This extends even to minor cases.¹ The court also possesses an appellate jurisdiction in all cases tried in consular courts, or in the Commissioner's Court at Shanghai. From decisions of the American Court for China there is an appeal to the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, and thence again appeals and writs of error may be taken into the

¹ *In re Estate of A. C. K. Fitch*, March 9, 1919 (decision of the United States Court for China, *Extraterritorial Cases*, p. 869).

Supreme Court of the United States “ in the same class of cases as those in which appeals and writs of error are permitted to judgments of said courts of appeals in cases coming from district and circuit courts of the United States.” By an Act of Congress of February 13, 1925, judgments and decrees of the Circuit Courts of Appeals may be reviewed by the Supreme Court only by *certiorari*, which is discretionary by the Supreme Court, or by way of appeal or writ of error when the decision of the Court of Appeals conflicts with a law of a State or of the Union, the validity of which may be tested by reference to the Constitution of the United States. Prisoners, if condemned for minor offences, are imprisoned either in the American gaol at Shanghai, or in some designated prison. Where persons are condemned to imprisonment for more than three months they are usually sent to Manila. The Attorney-General of the United States may, however, order them to be transferred to American federal prisons. The law applied in American courts will be considered in a later section.¹

France.—The exercise of extraterritorial jurisdiction in China by France is regulated by a law of July 8, 1852, applying the system in force in the Levant, with modifications, to China. Other laws relating to the subject are the Admiralty Ordinance of 1681 ; the edict of June 1778, defining the judicial and police functions of French consuls abroad ; the law of May 28, 1838, relating to extraterritorial jurisdiction in the Levant ; the law of April 28, 1869, constituting the Court of Saigon an appeal court from French consular courts in China, and dealing with crimes of French citizens in China ; and the law of July 15, 1910, constituting the Court of Appeal of Hanoi an appellate court from French consular courts in China, and dealing with crimes committed by French citizens in that province. There are seventeen French consular courts in China. In each, the consul exercises civil and criminal jurisdiction, with two assessors, except in police cases, when the consul sits alone. At Peking the *chancelier* of the Legation exercises jurisdiction. In 1917 a judge for China was appointed to sit in consular courts in the absence of consuls. Apart from this, a member of the consular staff may represent the consul in hearing cases, but must hear all stages of the case. Assessors

¹ *Report*, pp. 98–99. For the text of the Act of Congress establishing the United States Court for China see Appendix LXI. For American statutes relating to extraterritoriality, see Appendix LX.

must be French citizens, with full civil rights. In civil and commercial cases, they are appointed for each case. In criminal matters, assessors are appointed for a year. If two assessors cannot be obtained, the consul sits alone. The *chancelier* acts as registrar and clerk of the court (in Peking, the deputy *chancelier*). There is no public prosecutor in consular courts, and the consul acts as examining magistrate. French consular courts have full civil and commercial jurisdiction in all cases where a French citizen or *protégé* is defendant. There is no appeal in civil cases concerning personal matters or movables where the amount involved does not exceed 3000 francs, or where the parties agree that there shall be no appeal. In criminal matters, the consular court has jurisdiction over misdemeanours. Imprisonment may be commuted to a fine where there is no suitable prison. Serious criminal offences are remitted to the courts of appeal at Saigon or Hanoi for trial, first to the Indictment Court of the Procurator-General and afterwards, if the charge is sustained, to the Full Court. The consular court sits as a "Council Chamber," when the consul does not directly summon petty offenders before him. In criminal cases the court is convoked in this form as soon as the legal inquiry is completed. The Council Chamber decides (*a*) that proof is insufficient and that there is no case for prosecution; (*b*) that the offence is a police offence, requiring a police trial; (*c*) that the offence is a misdemeanour, requiring trial in the court for petty offenders; or (*d*) that the offence constitutes a crime, when an order for the remand in custody of the accused must be issued, followed by the submission of evidence and the court record, together with the accused himself, to the procurator-general of the court concerned. There is no appeal in police cases. In civil cases, notices of appeal depend upon the provisions of the edict of 1778, and Articles 456 and 461 of the Code of Civil Procedure. Appeal lies to the Appellate Courts of Saigon and Hanoi. In penal matters, anything classed as a misdemeanour (*délit*) may be appealed, under the procedure established in the law of 1836, and the code of legal inquiry in criminal matters. There exists also a further appeal to the Court of Cassation in Paris. In civil cases, this arises only in consequence of a plea that the court below has exceeded its powers. In penal matters, there can be no appeal in police cases. The law administered in French consular courts is French law, in so far

as it does not conflict with the special provisions of consular jurisdiction established for China. French courts, however, follow the rules of private international law where the plaintiff is a foreigner.¹

Belgium.—The status of Belgian subjects in China is regulated by the Consular Organisation Law of December 31, 1851. There is no permanent consular court, but this can be formed when necessary on the initiative of the consuls at Canton, Hankow, Shanghai, and Tientsin. When formed, the consular court comprises the consul as president, two assessors, a registrar (the chancellor of the consulate). The jurisdiction of the courts is controlled by the Royal Procurator-General at Brussels. In civil matters, the consul sits alone where the sum involved does not exceed 100 francs. He sits with two assessors in all other cases. There is an appeal from consular judgments to the Court of Appeal at Brussels, and a further appeal on points of law to the Final Court of Appeal at Brussels in the circumstances permitted by Belgian law. Disputes between Chinese citizens and Belgian subjects are decided by arbitration procedure established by Article 16 of the Treaty of Peking. In police cases the consul sits alone, there being no appeal from his judgment. Misdemeanours (*délits*) are tried by the consul and two assessors, there being an appeal to the Court of Appeal at Brussels, and a possible further appeal on points of law to the Final Court. Persons accused of crimes are sent to the Assizes of the Province of Brabant.²

Denmark.—The exercise of consular jurisdiction over Danish subjects in China is now regulated by the Act of Parliament of February 1895, conferring on the Ministry of Foreign Affairs authority to issue instructions regulating the exercise of consular jurisdiction in China. This is now exercised by the Danish Consular Court in Shanghai, which comprises the consul-general at Shanghai, assisted by his staff, and the subordinate local consuls. In civil cases the consul-general is sole judge. In criminal cases he alone directs the preliminary inquiry, and he alone passes sentence where the appropriate penalty does not exceed 200 crowns. In more serious cases he must be assisted by assessors, who have an equal vote with him, decisions being made by a majority of votes. The court can hear all civil cases where Danish subjects,

¹ *Report*, pp. 104–106.

² *Ibid.* pp. 100–101.

resident or temporarily sojourning in China, are defendants. This includes probate jurisdiction. In criminal matters the court can inflict sentences to a maximum of six months imprisonment. More serious cases are remitted to Copenhagen for trial. The consular judge acts as bailiff to execute sentences and agreements made in court upon Danish subjects. He also issues police regulations for the observance of Danish subjects throughout China. The court sits in the French concession at Shanghai, and prisoners are confined in the French gaol. The law applied is Danish law, modified by local customs and necessities. In some cases, where there is no possibility of direct application of Danish law (*e.g.* respecting the restrictions on the importation of arms into China), the court deals with the offender by analogical application of Danish law. In the last ten years, only twenty-five criminal cases have been tried by the court. Civil cases average five per year for the last ten years.¹

Italy.—The exercise of Italian consular jurisdiction in China is governed by the Italian consular law in operation before the conclusion of the Treaty of Peking, and extending to Italian consular jurisdiction generally. Jurisdiction is vested in the consul himself or in the consular court attached to each consulate, and it extends to the appropriate consular districts. At Shanghai and Canton there are consuls-general, and at Harbin, Hankow, and Tientsin there are consuls. A consular court comprises the consul, or his delegate, and two assessors from a number selected annually by the consul. The vice-consul acts as registrar. Appeals are at the discretion of the consul, following a written application, although there is an appeal against his refusal to the Ministry of Foreign Affairs. The consul himself executes judgments. In non-contentious jurisdiction, consuls have the same jurisdiction as a president of a court of first instance in Italy, and the consular court has the same jurisdiction as the court of first instance. Only courts sitting in Italy however can have jurisdiction over cases of adoption or legitimation, or to transactions respecting Italian land. Decisions are taken in chambers, and there is an appeal to the Court of Appeal of Ancona in all cases permitted by the Italian law. Pending the decision of the appeal, however, they may be enforced by a special consular order. Civil jurisdiction without appeal is exercised in all disputes

¹ *Report*, pp. 102-104.

arising between members of the crew and the master of the (Italian) vessel respecting wages, allowances, rations, etc. In other civil and commercial cases, where the sum in dispute does not exceed 500 lire, the consul sits alone. In disputes above this amount, the consular court has jurisdiction. Italian law, modified by local and commercial customs, is applied; and the rules of private international law in such cases are followed. Procedure is somewhat simpler than before Italian courts. There is no appeal from judgments of the consul sitting alone, or from decisions of the consular court where the sum in dispute does not exceed 1500 lire. In all other cases there is an appeal to the Court of Appeal of Ancona, notice being filed at the consulate within ten days from notification of judgment, and at Ancona within the year. In criminal matters the consul alone has jurisdiction in *contravvenzioni*, the consular court takes cognizance of *delitte*, and more serious crimes (*crimini*), punishable with imprisonment for three years or more, are sent to the Assizes Court of Ancona. In cases tried in China, the consul himself performs the duties of a procurator. He is also the investigating judge, where a preliminary investigation is necessary. The consular court, sitting in chamber, receives the report of the investigating judge, and decides either on discharge of the accused or on committal to the appropriate tribunal. Where persons accused are sent to Ancona, full documents are sent. Italian criminal law, together with municipal by-laws, are applied. There is no appeal from the decision of a consul sitting alone. In cases tried by the consular court, there is an appeal to the Court of Appeal of Ancona only on petition of the person sentenced, or of the procurator-general of the Court of Appeal, or where the aggrieved party sues for damages exceeding 1500 lire. Notice of appeal must be filed within five days from the reading of the judgment in court, or within ten days of notification of judgment, where the party concerned was not present in court. Consuls are invested with police authority, and may thus promulgate binding police regulations where these are required. A consul may also expel an Italian subject from his consular district if his conduct is such as to jeopardise public order, and also for moral or political reasons.¹

¹ *Report*, pp. 106-108.

Japan.—Japanese consular jurisdiction in China is regulated by the “ Law relating to the Duties of the Consular Official ” of 1899, followed by the “ Detailed Rules relating to the Duties of the Consular Official.” The Japanese consular official has jurisdiction in all civil cases, bankruptcy cases, non-contentious matters, and in criminal cases falling short of felony. This term includes offences punishable with death, imprisonment, penal servitude for life, or for a term of not less than one year. In these cases the consular official conducts the preliminary examination, the place of trial varying. Where persons are remitted from a consular official in Central China, the appropriate court is the District Court of Nagasaki ; from Manchuria, the appropriate court is the District Court of Kwangtung (*i.e.* in North China) ; from Chientao they are sent to the District Court of Seishin, Korea ; and from Southern China, they are sent to the District Court of Taihoku, Formosa.¹ Offences against the Imperial Family or against the internal security of the State fall within the special jurisdiction of the Supreme Court of Japan, or of the Colonial Government which conducts both the preliminary examination and the public trial. Appeals from decisions of the consular officials in Central China, together with appeals from the District Court of Nagasaki in cases of felony committed by Japanese subjects in Central China, are heard in the Court of Appeal of Nagasaki, from which tribunal there is a further appeal to the Supreme Court of Japan. Appeals from the consular officials in Manchuria, and from the District Court of Kwangtung for felonies of Japanese in Manchuria, are heard in the Division of Appeal of the High Court of Kwangtung, from which there is a further appeal to the Division of Final Appeal of the High Court of Kwangtung. Appeals from the consular officials in Chientao, and from the District Court of Seishin for felonies of Japanese subjects in Chientao, are heard in the Court of Appeal of Seoul, from which there is a further appeal to the Supreme Court of Korea. Appeals from the consular officials in Southern China and from the District Court of Taihoku are heard in the Division of Appeal of the High Court of Formosa, from which there is a further appeal to the Division of Final

¹ These arrangements, together with those for appeal, may seem somewhat cumbrous, but it must be remembered that there are upwards of one million Japanese subjects of all types at present in China (*Report*, p. 25).

Appeal of Formosa. There are thirty-five Japanese consulates in China, and the consular official in charge is in each case judge, except that to each of the consulates-general at Fengtien, Tientsin, Shanghai, and Tsingtao a consul or vice-consul is attached solely for judicial purposes. These consular officials are chosen from the ranks of judges in the Japanese judicial service. The chancellor or the police official of the consulate discharges the duties of procurator, while the chancellor generally acts as registrar. Where the chancellor so acts, he is usually a lawyer possessing experience as a registrar in a Japanese court. Judicial procedure in Japanese consular courts follows that of the ordinary Japanese courts. Where, however, a criminal case affects friendly relations with a foreign State, the Minister for Foreign Affairs may order the accused to be removed to a Japanese prison, and direct the case to be examined and tried by either the District Court or the Court of Appeal of Nagasaki, the District Court of Kwangtung, the District Court of Seishin, or the District Court of Taihoku. The law applied is the law of Japan, modified from time to time by Imperial Ordinances and Orders of the Minister of Foreign Affairs. Consuls also have the power to issue police regulations, and to punish by order by a fine of not more than 50 yen or detention. Sentences of imprisonment are carried out in Japanese gaols in China, but prisoners sentenced for comparatively long terms are sent to prison in Japan. Provision also exists for the capture and return of Japanese criminals by Chinese authorities and those of foreign Powers with concessions in China. This system is reciprocal, and the mutual executions of judgments, as a result of agreements with foreign authorities, is possible, but not common.¹

The Netherlands.—The Consular Law of July 25, 1871, regulates the exercise of jurisdiction by the consular officials of the Netherlands in China. Of this law there have been numerous amendments, the last being made in 1918. Only consuls who have been specially designated by Order in Council may exercise judicial functions. Accordingly, only the consuls of the highest rank at Amoy, Canton, Shanghai, and Tientsin do so. Jurisdiction may be exercised either by the consular officer alone, or by a court comprising the consular officer as president, and two assessors appointed by the chief of the

¹ *Report*, pp. 108-111.

Netherlands legation. The law of the Netherlands is applied, modified, in commercial cases, by well-established usages of trade. Procedure follows the practice in courts situated in the Netherlands, but is somewhat simplified. Consular officers may make police regulations with the approval of the Dutch Minister. Offences against these orders may be punished by a fine of 25 florins, or six days detention, or both. They may also issue more important regulations, breaches of which may be punished with six months detention or a fine of 600 florins, with the approval of the Minister for Foreign Affairs. In civil cases, the consular officer sits alone where the amount involved does not exceed 75 florins, and from these decisions there is no appeal. In criminal cases he sits alone where the offence merits a fine not exceeding 60 florins or six days detention, or both. The Consular Court tries all other civil cases and from its decisions there is an appeal to the Court of Justice of Batavia where the amount in dispute exceeds 600 florins. This civil jurisdiction includes matters of guardianship, curatorship, marriage, bankruptcy, default of payment and similar affairs. In criminal cases, the consular court tries all offences (as distinct from crimes), where the punishment is detention for more than six days, or a fine of more than 60 florins. In these cases there is no appeal. Crimes meriting not more than four years imprisonment are also tried by the consular court, but there is an appeal to the Court of Justice of Batavia. More serious crimes are tried directly by the Court of Batavia. From the Court of Batavia there is a possible further appeal to the High Court of Justice of Netherland-Indies, which also exercises the right of "cassation" of all final judgments and decisions, except criminal cases (where there is a formal right of appeal). Imprisonment for not more than six months is served in prisons of other nations. More serious offenders are sent to Netherland-Indies.¹

Norway.—Norwegian consular jurisdiction in China is regulated by the law of March 29, 1906. It may be exercised either by the consul alone, or by the consul with the assistance of two assessors, who are experienced mercantile or nautical men, or who possess similar qualifications. The Consul-General at Shanghai is the Consular Judge, and in appointing him attention is paid to previous judicial training. In criminal cases (where the Consular Judge also

¹ *Report*, pp. 111-112.

exercises the functions of public prosecutor), the consul sits alone, but with two jurors, where fines only can be inflicted, and also, where the accused agrees that assessors shall not be called, in cases where the punishment cannot exceed imprisonment for three months. The consular court has jurisdiction in all other criminal cases where the penalty does not exceed three years imprisonment. Where it does, the accused must be sent to Norway for trial. There is an appeal from judgments of the Consular Judge and of the consular court to the Supreme Court of Norway, at Oslo. Civil cases, including divorce, are heard by the Consular Court, except that the Consular Judge may sit alone to hear cases where the sum in dispute does not exceed 200 kronen. There is an appeal, where the claim exceeds this amount, to the Supreme Court of Norway at Oslo. In cases involving a less amount, an appeal lies to the City Court of Oslo. The law applied is the Law of Norway, together with municipal regulations for the governance of Norwegian subjects in China. The Consular Judge sits regularly in Shanghai, but he may sit, if needed, in other treaty ports.¹

Portugal.—Portuguese consular jurisdiction is exercised by consuls and consular courts. The law of Portugal applies, with modifications, resulting from diplomatic conventions. Articles 523–620 of the Consular Regulations contain full particulars of the exercise of consular jurisdiction in civil and commercial matters. An attempt to settle the case by friendly means must always be made, before the vice-consul, before a case is brought to trial. The consul sits alone where the amount in dispute does not exceed 200 escudos. In these cases there is no appeal. In cases where the amount involved exceeds 200 escudos the consul sits with two assessors, who are judges of the facts. There is an appeal to the High Judicial Court at Goa. In criminal matters the consul sits alone, where the penalty is a caution, suspension of political rights for not more than five years, a fine of not more than 1000 escudos, banishment for not more than six months, or imprisonment for not more than six months. The Consular Court hears all other criminal cases, except those specified in Articles 55–57 of the Penal Code. These are crimes where the imprisonment is from two to eight years, followed by exile from eight to twenty-five years, or expulsion from Portugal, or sentence to be served in

¹ *Report*, pp. 112–113.

Portuguese West African Colonies. These are remitted to the Judicial Court at Macao for trial, together with a full report from the consul. From the Judicial Court at Macao there is an appeal to the High Judicial Court at Goa, and a possible further appeal on questions of law and procedure to the Supreme Court at Lisbon.¹

Spain.—Spanish consular jurisdiction is governed by regulations of November 18, 1854. The consul sits with two assessors, adult Spanish citizens, if possible. Spanish law is applied. In civil cases, in matters of minor importance (where the amount in dispute does not exceed \$100) the procedure is by arbitration, arbitrators being appointed by the parties or, failing such appointment, by the consul, who may also appoint a third arbitrator in case of disagreement. In matters above this amount the Consular Court has jurisdiction. Offences committed by Spanish subjects where no arms have been used or blood spilt are also tried by the Consular Court on application of the injured party. Where arms have been used or blood spilt the consul himself inaugurates the prosecution. In matters of a non-contentious nature the consul has the powers of a judge of a Spanish Court of First Instance. Consular decisions are final in civil matters, where the amount in dispute does not exceed \$400, and the consul executes them.² In matters above this amount and in the more important crimes there is apparently an appeal to Madrid.

Sweden.—The exercise of Swedish consular jurisdiction rests on the law of June 5, 1909. Sweden claims jurisdiction over Swedish subjects, *protégés*, and subjects of other nations where these commit offences on Swedish vessels. At present, however, there are no Swedish *protégés* in China. Swedish law is applied as far as local conditions permit, and as far as Swedish legislation does not provide to the contrary. Certain Swedish laws, however, relate to Sweden alone, and require royal sanction for extra-territorial operation. For this reason "it may be doubted whether, for instance, the Consular Court is in a position to legalise mortgage deeds on a real estate in Shanghai, owned by a Swede."³ The court comprises the Swedish Consul-General as president, and two assessors. The Consul-General, however, may sit alone in civil suits where the amount in dispute does not exceed 300 kronen, and in criminal cases where no severer penalty than a fine

¹ *Report*, pp. 113-114.

² *Ibid.* pp. 114-115.

³ *Ibid.* p. 116.

can be imposed, or damages of 300 kronen recovered. He also sits alone to deal with matters relating to the estates of deceased persons, guardianship, marriage settlements, and probate. The consular judge is also the highest police authority, and the executive officer of the court. The court may sit at any treaty port in China, but it has hitherto sat at Shanghai. The Consul-General has authority to issue police regulations imposing a fine of not more than 500 kronen for a breach of them, after ratification by the King. Appeals, both from the Consular Judge and from the Consular Court, are heard by the Court of Appeal at Stockholm, whence there is a further appeal to the High Court of Justice. Procedure in the Swedish Consular Court is both simplified and liberal, having been conducted in English, and occasionally in German, where convenience suggested, and records having been written in these languages. Where a Chinese who is ignorant of English is plaintiff or witness, the Chinese secretary to the consulate acts as interpreter. Criminal cases are heard as speedily as possible, and court fees in all cases are exceedingly low. Wherever possible, the consul settles disputes out of court.¹

Other Countries.—The remaining states with extraterritorial rights in China were not represented on the Extraterritoriality Commission, and no analysis of their provision for the exercise of consular jurisdiction therefore appears in the Report. Switzerland formerly committed its extraterritorial rights to the care of French Consular Courts, but a Swiss Consular Court has now been established. Brazil in 1925 had one subject in China, Mexico had twelve, and Peru none.² For these it is obvious that no detailed provision is necessary. Presumably the respective consuls, in case of necessity, possess the necessary judicial and disciplinary powers, remitting serious offenders for trial to the courts of the States they represent.

II. THE BRITISH CONSULAR COURT AT KASHGAR

The Consular District of Kashgar, geographically situated in proximity to the Indian Empire, has been provided with a Consular Court separate from the general system of British extraterritorial jurisdiction in China, and regulated by a different Order in Council—viz. The China (Kashgar) Order in Council,

¹ *Report*, pp. 115–117.

² *Ibid.* p. 25.

1920. The jurisdiction conferred by the Order includes not only British subjects (including natives of Protectorates) but also "foreigners with respect to whom any State, King, Chief, or Government, whose subjects, or under whose protection they are, has by any treaty, as herein defined or otherwise, agreed with His Majesty for or consented to the exercise of power or authority by His Majesty." ¹

Jurisdiction is exercised by the court of the Consul-General. The law applied and the procedure adopted are based upon those of British India, and section 8 (2) specifically renders applicable a quantity of Indian legislation, whilst section 9 renders applicable the enactments described in the first schedule to the Foreign Jurisdiction Act, 1890, with some modifications. All legislation, however, is to be applied by the Consular Court "with such alterations and adaptations not affecting the substance as may be necessary having regard to local circumstances." ² In criminal matters, the Indian Code of Criminal Procedure applies as though Kashgar is a district in the Punjab, the Consul having the powers of a sessions judge, and an appeal lying to the High Court of the Punjab.³ Where it is deemed expedient, offenders may be sent to Lahore for trial, following a preliminary examination by the Consul.⁴ Alternatively, offenders sentenced by the Consul may be imprisoned in the Punjab.⁵ The court has power to prohibit persons subject to its jurisdiction from residing within the consular district following proof that they are about to commit offences, or are exciting enmity between Chinese and British subjects or are intriguing against His Majesty's power and authority.⁶ The court has also authority to order deportations.⁷ Unauthorised return after deportation renders the offender liable to two months imprisonment, or a fine of 500 Kashgar taels, and fresh deportation.⁸ Against an order for deportation there is no appeal. Intervention in China's civil wars is punishable with two years imprisonment and a fine of 3750 taels,⁹ whilst publication of any seditious matter (*i.e.* "matter calculated to excite tumult or disorder, or to excite enmity between His Majesty's subjects and the Government of China, or the authorities or nationals in China or any Power in amity with His Majesty, or between the Govern-

¹ Section 5 (4).

⁴ Section 12.

⁷ Section 19.

² Section 10.

⁵ Section 14.

⁸ Section 19.

³ Section 11.

⁶ Section 18.

⁹ Section 22.

ment of China and its citizens ") is punished with imprisonment for two months and/or a fine of 75 taels.¹ Power is given to the court to punish for contempt.² Offences against the British India law relating to trade marks, merchandise marks, copyright designs, and inventions, are punished with a fine of 500 taels or two months imprisonment, whilst all smuggling and illegal trading renders the offender liable to six months imprisonment³ and/or a fine of 750 taels. Other special offences, usually to be found in China Orders in Council, and provided with special penalties, are insults to religion, piracy (wherever committed),⁴ and offences against treaties.⁵

In civil matters, the Indian Civil Code and other laws of British India are applied, and the Consular Court has the powers of a District Court, an appeal lying to the Chief Court of the Punjab.⁶ Jurisdiction includes probate and administration of estates of deceased persons, for which special regulations are made.⁷ Part V deals with the position of foreign plaintiffs in British consular courts, and of British plaintiffs and witnesses in foreign consular and Chinese courts. As these provisions are practically identical with those to be found in the China Order in Council of 1925, consideration of them is postponed. Part VI provides for the registration of British subjects in the Consular District of Kashgar. Section 57 provides that "the Consul-General shall, as far as there is proper opportunity, promote reconciliation, and encourage and facilitate the settlement in an amicable way, and without recourse to litigation, of matters in difference between British subjects, or between British subjects and foreigners, within the limits of this Order," whilst Section 61 confers on the Consuls-General the usual power to make and alter King's Regulations, subject to the approval of the Governor-General of India in Council. By virtue of King's Regulations, native and local laws and customs may be (and are) recognised and enforced.⁸

¹ Section 24.

⁴ Section 29.

⁷ Sections 34-36.

² Section 25.

⁵ Section 30.

⁸ Section 62.

³ Section 28.

⁶ Section 33.

III. NATURE OF EXTRATERRITORIAL JURISDICTION IN CHINA
CONSIDERED GENERALLY

To discover the exact nature of extraterritorial jurisdiction, whether in China or elsewhere, is the most difficult problem connected with the subject ; especially, as will be shown later, since the answer may not necessarily be the same for all countries in which that jurisdiction is exercised. Again, all States exercising extraterritorial rights do not by any means take the same view of those rights ; whilst the views even of one State may not necessarily be the same at all stages in the history of its extraterritorial jurisdiction. Among individual writers opinions vary from the purely contractual theory to the theory of State protection, which rests upon a wider basis than treaty-grant. Thus, Dr. Moore ¹ observes :

“ Owing to diversities in law, custom, and social habits, the citizens and subjects of nations possessing European civilization enjoy in countries of non-European civilization, chiefly in the East, an extensive exemption from the operation of the local law.” ²

He adds, however :

“ In dealing with the subject of extraterritorial jurisdiction, the fact should be borne in mind that while the system rests, in the Ottoman dominions, upon ancient custom as well as upon the provisions of treaties or so-called capitulations, it was established in China and in Japan by the treaties with the Western Powers, the first being that concluded between Great Britain and China, at the end of the opium war, in 1842. The importance of the distinction is obvious. It serves to explain the existence in the Ottoman dominions of practices which were not based upon the stipulations of the treaties, and which formed no part of the extraterritorial system as it was established in China and Japan. Of these practices the principal one is that of the protection granted by the consuls of treaty Powers to the citizens of other treaty Powers or to the citizens of non-treaty powers, or even to natives.” ³

This virtually denies the existence of extraterritoriality in China by sufferance, and is perfectly correct as a definition of the attitude of the United States to the question, but the cases cited in Chapter II indicate that the other foreign Powers at Canton denied Chinese jurisdiction habitually after 1784. The creation of the British Court in 1833, as well as the cases of Lin Wei-hi and Hsü A-man, also cannot be reconciled with this

¹ *Digest of International Law*, vol. ii. par. 259. ² P. 593. ³ P. 596.

general pronouncement. The *protégé* system formerly existed in China, but has now been abandoned.

An able exposition of the contractual theory was recently made by Dr. Baty.¹ Briefly stated, his contention amounts to this : The jurisdiction which the extraterritorial Powers exercise in China is derived, exclusively through treaty, from the Chinese Government. In other words, extraterritorial courts are Chinese courts, even though presided over by foreigners. Moreover, Dr. Baty holds that the treaties confer judicial authority only ; “ they confer no legislative or administrative rights whatever ; and they do not state what law is to be applied by the foreign judicial authorities.”² Dr. Baty’s view of the law that *ought* to be applied is, at any rate in civil cases, natural law, based on the principles of equity. He notices, however, that in the case of Great Britain this was superseded, after the Chefoo Convention, by the law of the defendant’s nationality.³ Consideration of the law to be applied, however, does not directly affect the question of the nature of the jurisdiction exercised. On this, it may be admitted at once that there is a certain amount of evidence to support Dr. Baty’s theory, and more especially in the famous case of *Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co.*,⁴ in which Lord Hobhouse observed :

“ The Queen and her officers are acting as Zanzibar authorities, by virtue of the power she has acquired, and which is within its limits a Sovereign Power. It results that a judge acting within those limits is a Zanzibar judge, and is bound to take judicial notice of the Zanzibar law, whatever it may be, applicable to the case before him.”

The extent of the application of this case to China will be considered later. Meanwhile it must be pointed out that Dr. Baty’s theory of the derivation of British judicial authority in China solely from treaties ignores British usage before the treaties existed, ignores also the constitution of the British Court for China in 1833, nine years before the first treaty, and accords neither with the language of the Foreign Jurisdiction Act and the resultant Orders in Council, nor with the views of the Chinese Government itself. The Foreign Jurisdiction Act, 1890,⁵ accords

¹ “ Extraterritoriality,” *Hong Kong University Law Journal*, vol. i. No. 2, p. 93 (January 1927).

² *Ibid.* p. 86.

³ P. 92.

⁴ (1901) A.C. 373.

⁵ 53 & 54 Vict. c. 37.

His Majesty jurisdiction in China "by treaty, capitulation, grant, usage, sufferance, and other lawful means." The China Order in Council, 1925, also derives it from "treaty, grant, usage, sufferance, and other lawful means," whilst the declaration of the President of China of October 10, 1913, regards extraterritorial rights in China as existing "by virtue of international engagements, national enactments, and established usages."¹ To regard extraterritoriality in China as derived solely from the treaties is equivalent to regarding English law as comprising statutes alone, ignoring equity, precedents, and custom.

The nature of extraterritoriality based on sufferance received consideration in *Papayanni v. Russian Steam Navigation Co. (The Laconia)*² (1863), and in the course of his judgment in that case Dr. Lushington observed :

"In considering what power and what jurisdiction was conceded to Great Britain within certain portions of the Turkish dominions it must always be borne in mind that in almost all transactions, whether political or mercantile, a wide difference subsists in the dealings between an Oriental and a Christian State and the intercourse between two Christian nations. This is an undoubted fact. Many of the reasons are obvious, but this is not the occasion for discussing them. It is sufficient for us to know and acknowledge that such is the fact. It is true beyond all doubt that, as a matter of right, no State can claim jurisdiction of any kind within the territorial limits of another independent State. It is also true that between two Christian States all claims for jurisdiction of any kind, or exemption from jurisdiction, must be founded on Treaty, or engagements of similar validity. Such, indeed, were Factory establishments for the benefit of trade. But although, according to the laws of European nations, a cession of jurisdiction to the subjects of one State within the territory of another would require, generally at least, the sanction of a Treaty, it may by no means follow that the same strict forms, the same precision of Treaty obligation, would be required or found in intercourse with the Ottoman Porte. It is true, as we have said, that if you inquire as to the existence of any particular privileges conceded to one State in the dominions of another, you would, amongst European nations, look to the subsisting Treaties ; but this mode of incurring obligations, or of investigating what has been conceded, is matter of custom, and not of natural justice. Any mode of proof by which it is shown that a privilege is conceded is, according to the principles of natural justice, sufficient for the purpose. The formality of a Treaty is the best proof of the consent and acquiescence of the parties, but it is not

¹ *Report of the Extraterritoriality Commission*, p. 98.

² 2 Mo. P.C. (N.S.) 161 ; 15 Eng. Rep. p. 862.

the only proof, nor does it exclude other proof ; and more especially in transactions with Oriental States. Consent may be expressed in various ways ; by constant usage permitted and acquiesced in by the authorities of the State, active assent, or silent acquiescence where there must be full knowledge.”¹

To turn for a moment to Dr. Baty’s view of the law applied, there are here further difficulties. Concerning the relinquishment of the “ natural law ” system after the Chefoo Convention, he observes that the Convention

“ introduced the absurd result, that, by English law, a contract made in China between a Chinese and an Englishman has a totally different meaning and validity according as the Chinese is plaintiff or defendant . . . In the present case, since the Chinese is always incapable of attack in the British Consular Courts, if the contract is invalid by Chinese law, the Chinese will be a successful defendant and a successful plaintiff alike, in China. He can assert the contract against the Englishman, and repudiate it against the Englishman—a ridiculous position.”²

Although the position contemplated is certainly unfortunate, it is nevertheless no more so than if an Englishman in London made a contract with a Chinese in Shanghai, without extraterritoriality. The position would vary with the forum adopted ; and the defect is indeed inevitable while national laws exhibit appreciable differences. On the other hand, even Dr. Baty’s “ natural law ” system gives rise to difficulties. The “ law of the defendant ” system does at least ensure continuity of administration in differing national courts in China. Thus British law is always applied in a British court. Suppose, however, the law applied was an equitable rule, forming, as it were, a mean between the laws of defendant and plaintiff. Unfortunately, not only Chinese are suitors in British courts in China but also many other foreigners, and therefore, governing the same contractual relation, in the same court, there would be applied an Anglo-Chinese rule, an Anglo-French rule, an Anglo-Peruvian rule, an Anglo-Siamese rule, and so on, *ad infinitum*—and a purely British rule where both parties are British subjects—a chaotic result. For this reason the Extraterritoriality Commission’s suggestion that Chinese laws should be increasingly applied in foreign consular courts in China is beset with difficulties, for it would necessarily imply the recognition of other national laws in extraterritorial

¹ At p. 181.

² *Op. cit.* p. 92.

courts in China, when other foreigners were plaintiffs. Where does the Consul exist who possesses the necessary qualifications for such a task ?

A somewhat different view of the law applied in extraterritorial courts in China, and directly dependent upon the contractual theory of extraterritoriality, is advanced by Dr. Wellington Koo, who writes :

“ With reference to the Treaty Powers themselves, it may be said that extraterritoriality entitles them to exercise so much authority over their nationals in China as is necessary to enforce effectively, by judicial methods, the law declared to be in force by the Emperor of China. What the content of this authority consists of may easily be comprehended ; it includes only the power to regulate, for the purpose of enforcing territorial laws upon their own subjects or citizens in China, questions concerning the machinery of their courts, the law of procedure, the mode of trial, the rules of evidence, the incidence of responsibility, the measure, degree, kind, and manner of punishment, and other kindred matters. The sovereign power of legislation, on the other hand, remains in the Emperor of China unimpaired. He may make any law he sees fit for the purpose of maintaining the public peace and order, of preserving the decency and morals of the people, of promoting the welfare of his country, or for any other legitimate purpose.” ¹

This latter proposition may be admitted at once, but the laws so framed are not binding on nationals of treaty Powers unless recognised and enforced by the treaty Powers themselves. It is also submitted that Dr. Koo's contention that the function of the extraterritorial Courts in China is “ to enforce effectively . . . the law declared to be in force by the Emperor of China ” is totally inadmissible in view of the clear and unequivocal provision of the Chefoo Convention that “ the law administered will be the law of the nationality of the officer trying the case.” It may also not be irrelevant to add that Dr. Koo's statement is totally at variance with the general practice of extraterritoriality in countries where the right has existed, or still exists. Invincible from the standpoint of principle is the memorandum of Mr. Seward, American Minister at Peking, written in 1879. He declares :

“ The simple truth is that when foreigners are tried in their own courts and by their own laws no indictments against them can be

¹ *Status of Aliens in China*, p. 217.

sustained which do not describe offences which would be punishable by law if committed at home, or which have been made punishable by some provision of the given treaty or enactment made in pursuance of the Treaty. It is not meant by this to assert that the only obligation of foreigners in China is to regard the laws of their own country. In actual practice it comes to this : that foreigners are bound to observe the laws of the (Chinese) Empire so far as they conform to the laws of their own country.”¹

And later he observes :

“ My own view is that we cannot deny the right of the Chinese Government to make rules and regulations affecting all matters within their sovereignty, but that we may scrutinize all rules and regulations made or proposed by them which affect our nationals and object to them if we find them in contravention of treaty stipulations, or suggest their withdrawal or modification if they appear burdensome or unnecessary. Holding to this view, I think also that we may without offence endeavour to lead the Chinese to communicate to us in advance all such rules and regulations, in order that we may examine them and state in advance of their publication whether we should be likely to complain of them as in contravention of our treaties.”²

The British attitude was precisely similar. In fact, the treaty Powers seem to be unanimously agreed upon the point, and it must not be forgotten that while at the present time there is no objection to administering Chinese law in extraterritorial courts, it would have been morally wrong to do so, and impossible to attempt to do so, last century.

Any adoption of the contractual theory of extraterritorial jurisdiction in China inevitably involves an apologetic attitude towards the position assumed by foreign representatives at Canton before treaty days. In view of the East India Company's consistent policy for over two hundred years, throughout the Orient, however, it is submitted that this apologetic attitude is a mistaken one. In modern international law, between any two States fully subject to that law, two fundamental and conflicting principles operate. The first is the theory of State protection ; the second is the theory of exclusive jurisdiction of a State within defined territory. According to the latter, within the territory of State A only State A can ever exercise jurisdiction. According to the former, a State has the cardinal duty of protecting its subjects wherever they are. Within its own territory it affords

¹ *United States Foreign Relations*, 1880, p. 146 ; cited Willoughby, p. 617.

² P. 217 ; Willoughby, p. 618.

them direct protection through its courts. Abroad it commits them to the jurisdiction of the local sovereign when they are within the territory of a member of the family of nations. Yet this is not a renunciation of protection. It retains this unimpaired, though it is for the moment indirect. Protection may become direct, however, if redress is persistently refused its subjects in the local courts, when laws are unjustly discriminatory, or if the local laws become unreasonably harsh or retrograde.¹ It will also be noticed that protection may here be exercised peaceably through diplomatic protest, or remonstrance, or by force.² Turning to States of non-European civilisation, however, where these are not members of the family of nations, it is obvious that they can possess neither rights nor obligations properly within the sphere of international law. At the same time many (although not all³) possess the attributes of sovereignty, for treaties may be concluded with them. From which two propositions it follows (1) that a civilised State has stronger grounds for exercising protection, and therefore jurisdiction, over its subjects within the territory of such States, and (2) that, with the possible exception

¹ An interesting example of the exercise of the right of protection was reported in *The Times* of February 14, 1928, when adverse decisions of the French Court of Cassation against British subjects were brought to the notice of the French Government by the British Ambassador. The French Ministry of Foreign Affairs undertook to give special consideration to any cases which might be placed before it by the British Embassy, in which it could be shown that the French Courts had not paid proper attention to the diplomatic conventions to which British subjects had appealed.

² Oppenheim's view of the right of protection differs somewhat from Hall's. He holds that the right is discretionary and may be refused (*International Law*, i. pp. 494-495).

On the other hand, a subject may never, by his own act, withdraw himself from that protection. Thus Mr. Bayard, United States Secretary of State, wrote in 1888: "The legislation of various countries of Spanish America, such as Mexico, Venezuela, and Peru, has sought to establish that a foreigner, while continuing to be a subject or citizen of the country of his allegiance, may, by his own act, waive or forego the right to invoke the diplomatic protection of that Government in case of alleged injury. This position, whenever taken up, has been consistently opposed by the United States. . . . It is not competent to a citizen to divest himself of any part of his inherent right to protection or to impair the duty of his Government to protect him" (Willoughby, *op. cit.* ii. pp. 724-725). Replying to a question in the House of Commons in December 1927, Sir Austen Chamberlain, Foreign Secretary, observed that a British subject enlisting in the army of a foreign Power (e.g. the French Foreign Legion) might place himself beyond the protection of the British Government. This, however, is not the position in China, where extraterritorial rights continue in such a case (case of General Burgevine), but unless authorised, the act of enlistment would itself be an offence against the China Order-in-Council.

³ See Foreign Jurisdiction Act, sect. 2.

of communities whose civilisation is too primitive to permit the exercise of governmental sovereignty, the exercise of such jurisdiction is a limitation of the sovereignty of the territorial Power. In other words, the right of jurisdiction is ultimately *derived* by the protecting Power from the sovereignty of the territorial Power, although not necessarily by treaty. On the first point, Hall observes :

“ On the unappropriated sea, and on land not belonging to any community so far possessed of civilization that its territorial jurisdiction can be recognised, it is evident that, as between equal and independent Powers, unless complete lawlessness is to be permitted to exist, jurisdiction must be exercised either exclusively by each State over persons and property belonging to it, or concurrently with the other members of the body of States over all persons and property, to whatever country they may belong. The former of these alternatives is that which is most in consonance with principle. . . . Concurrent jurisdiction could therefore only be justified by a greater universal convenience than several jurisdiction can secure, and in most cases, so far from universal convenience being promoted, it would be distinctly interfered with, by the admission of a common right of jurisdiction on the part of all nations. It is consequently the settled usage that as a general rule persons belonging to a State community, when in places not within the territorial jurisdiction of any Power, are in the same legal position as if on the soil of their own state, and that, also as a general rule, property, belonging to the State or its subjects, while evidently in the possession of its owners, cannot be subjected to foreign jurisdiction.”¹

It should be noticed that according to this definition the criterion for determining whether a national of a State carries his law with him into a foreign State is whether the community is “ so far possessed of civilisation that its territorial jurisdiction can be recognised.” Thus the test in international law of “ civilisation ” is not any vague phrase such as “ standard of culture ” or the like, but “ a territorial jurisdiction that can be recognised ”—recognised, that is, by the Powers who are the subjects of international law.

There remains for consideration the decision of the Privy Council in *Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co.* Already in 1895 the Privy Council had clearly recognised the derivative nature of the Crown’s extraterritorial jurisdiction in Eastern States in the important case of *Imperial Japanese Government v. P. and O. Steam Navigation Co.*²

¹ Hall (8th ed.), pp. 300–301.

² (1895) A.C. 644.

A misleading view of *Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co.* is obtained, however, unless a somewhat lengthier account of it is given than Sir Francis Piggott furnished.¹ Land belonging to Charlesworth, Pilling & Co. had been compulsorily taken over by the British Government for the construction of the Mombasa Railway. The question in issue was the amount of compensation to which they were entitled. It was unquestioned that they were entitled to compensation for the land. On the land, however, were certain buildings which, by English law, belonged to the company, and which, by Mahomedan law, did not. The question was, Which law applied? The plaintiffs contended that the treaties had the effect of extending British law to the incidents of landholding by British subjects in Zanzibar. Lord Hobhouse delivered the judgment of the Privy Council, and in the course of an exceedingly able analysis of the nature of extraterritorial jurisdiction observed :

“ Looking at the latter part of Sect. XVI and the succeeding sections of the treaty, which have been quoted above, we find that it actually specifies all the usual benefits accorded by Mahomedan Powers to a British subject. If he is accused of crime or is defendant in a civil suit, his case is decided by his own nation's court. If he is complainant the Consul may intervene to protect his interests (Art. XVI). His servants receive similar protection (Art. XVII). In case of bankruptcy his property is dealt with according to British law (Art. XVIII). On his death, his property is to devolve according to British law and to be administered by the Consul (Art. XX). His house is not to be entered by the Zanzibar authorities against his consent unless the consul authorises it (Art. XXI). He is to enjoy the free and public exercise of his own form of religion (Art. XXIII). Their Lordships do not say that the list of specific instances, though very full, is exhaustive of the general term. Other cases of the same kind would doubtless be included if such there are. But it is reasonable to conclude that the things specified show the nature of the immunities desired by and accorded to the British subject—complete personal protection, assurance of satisfactory judicial tribunals, and such enjoyment of his property for himself and for those who claim under him as British law would afford him for British property. It is going a long way beyond that, and beyond the reason for these ‘immunities,’ to say that the moment a plot of land is purchased by an Englishman it is stamped with the same character and is attended by the same incidents that would belong to it if it were actually transferred to England and surrounded by other English land; and to say that his neighbours, who may or may not be British subjects, must have their rights and

¹ *Extraterritoriality*, chap. i.

liabilities governed by its fictitious and not its actual situation. Their Lordships hold that the grant of extraterritoriality does not involve any such conclusion, and that the Vice-Consul is right in holding that in this case the local law applies.

“The next question is how the local law is to be ascertained. Is it a matter of evidence, or should the Consular Court take judicial notice of it? The Vice-Consul held that he was an English judge, that it was to him foreign law and must be proved by evidence, though he says it is an extreme instance of that principle, especially as he is also one of the Sultan’s judges administering Mahomedan law. That circumstance, however, should make no difference in the principle, though it enabled the Vice-Consul personally to appreciate the evidence which he took. The Zanzibar Court was not called upon to express any opinion on this point because it held that the English law applies. The situation is one of some complexity. The root of the jurisdiction is the treaty grant or other matter by which the Queen has power and jurisdiction in Zanzibar. She thereby becomes an authority, though exercising her powers quite independently of the will of the Sultan. On that state of things the Foreign Jurisdiction Acts supervene for the purpose of binding all the subjects of the Queen, and they enable her to order in what way her authority in Zanzibar shall be exercised. She orders that it shall be exercised partly with English law, and partly with certain Anglo-Indian laws. The English law again for certain purposes, of which the present purpose is one, incorporates the local law of Zanzibar. But throughout the matter Zanzibar remains foreign territory, and the Queen and her officers are acting as Zanzibar authorities by virtue of the power which she has acquired, and which is within its limits a sovereign power. It results that a judge acting within these limits is a Zanzibar judge, and is bound to take judicial notice of the Zanzibar law, whatever it may be, applicable to the case before him.”¹

It will therefore be observed that this judgment is completely in accord with the principles already enunciated. British law is applicable to all cases in which British subjects are defendants, in Zanzibar, as in China, but in cases relating to real property, British law directs the application of the *lex loci rei sitae*, which is here Mahomedan law, and in China would be Chinese law. There is nothing startlingly novel about this principle. The Privy Council had already adopted it in *McArthur v. Cornwall*,² for Samoa, and Bourne, J., unhesitatingly followed it for China in *McDonald v. Anderson* (1904), cited in an earlier chapter. The apparent exception to the application of British law is therefore no exception.

¹ (1901) A.C., at pp. 384–385.

² (1892) A.C. 75.

It is now necessary to turn to the Foreign Jurisdiction Act, 1890, itself, for a further view of the basis of the Crown's rights of extraterritorial jurisdiction. The first three sections of this Act read as follows :

“ 1. It is and shall be lawful for her majesty the queen to hold, exercise, and enjoy any jurisdiction which her majesty now has or may at any time hereafter have within a foreign country in the same and as full a manner as if her majesty had acquired that jurisdiction by the cession or conquest of territory.

“ 2. Where a foreign country is not subject to any government from whom her majesty the queen might obtain jurisdiction in the manner recited by this act, her majesty shall by virtue of this act have jurisdiction over her majesty's subjects for the time being resident in or resorting to that country, and that jurisdiction shall be jurisdiction of her majesty in a foreign country within the meaning of the other provisions of this act.

“ 3. Every act and thing done in pursuance of any jurisdiction of her majesty in a foreign country shall be as valid as if it had been done according to the local law then in force in that country.”

There can be no question of the constitutional competence of Parliament to make legislative provision for the regulation of the conduct of British subjects abroad if it wishes ; indeed, proper regulation, where jurisdiction is claimed, is a necessary consequence of continuing protection. To protect and at the same time to permit subjects to infringe the rights of others would be repugnant to all principles of law, national or international. If, therefore, the language of the Foreign Jurisdiction Act be examined closely, it is apparent that Parliament contemplates the exercise of a sovereign right, by agreement with the territorial sovereign where expedient, but failing such an agreement (section 2), owing to the absence of a duly constituted government from which a grant may be obtained, simply by the exercise of sovereignty, following the provisions of the Act. Accordingly, it will be clear that in order to reconcile the Act with the principles of international law, the right of jurisdiction, with the corollary rights of legislation by order in council, and administration, must be derived eventually from the right of protection. Piggott, in considering the language of section 2, holds that the Crown is bound to obtain a formal grant when the community acquires a government with which the Crown can properly deal ; but this does not necessarily follow, for so long as the territorial sovereign remains

beyond the pale of nations subject to international law, the Crown is bound only by expediency and *boni mores* in the exercise of its self-interest, and when the territorial sovereign does eventually enter the community of civilised states, it is clear that in entering, it does not shake off obligations already existing—although agreement between the Powers concerned may lead to the abolition or modification of some.

Fully examined, therefore, extraterritoriality is not an exception to the general principles of international law, but a condition of intercourse, as Mr. Caleb Cushing pointed out, between states of different degrees of civilisation, where that difference is clearly and fundamentally reflected in the legal institutions of the states concerned.

IV. THE SCOPE OF BRITISH EXTRATERRITORIAL JURISDICTION IN CHINA

The Orders in Council regulating the exercise of British jurisdiction in China have now been consolidated in the Order in Council of 1925.¹ In geographical extent jurisdiction is coincident with the territory of the Chinese Republic, including Chinese territorial waters. Kashgar is not considered in the present section, and it is important to notice that the jurisdiction does not extend to the territories leased to Great Britain in 1898.²

Section 86, however, provides that

“where a British subject, being in China, is charged with having committed, either before or after the commencement of this order, any offence within a British ship at a distance of not more than 100 miles from the coast of China, or within a Chinese ship at such a distance as aforesaid, or within a ship not lawfully entitled to claim the protection of the flag of any State at such a distance as aforesaid, the Court within the jurisdiction whereof he is found may cause him to be apprehended and brought before it, and may take the preliminary examination and commit him for trial.”

Section 87 confers a similar jurisdiction on the Supreme Court of Hong Kong, except that it extends only to offences committed in British or Chinese ships within the prescribed limits. Section 88 extends the jurisdiction to deserters found in British ships within those limits. Warrants for search and delivery to the nearest military or naval station are issued by the Minister, any Judge,

¹ Except the Kashgar Order in Council.

² Section 2.

or the Registrar, any consular officer in China, or the Governor of Hong Kong.

The persons over whom jurisdiction is exercised are :

1. *British subjects*, including persons who are natives of any Protectorate, and who are for the time being in China ; and any persons to whom His Majesty has extended protection, by treaty or otherwise, in accordance with section 15 of the Foreign Jurisdiction Act. (But China has denounced the *protégé* system, and except for subjects of mandated territories, it is doubtful whether protection would now be afforded.)

2. The property and all personal or proprietary rights and liabilities within the said limits of British subjects, whether such subjects are within the said limits or not.

3. Foreigners with respect to whom, and to such extent as, any State, King, Chief, or Government, whose subjects or under whose protection they are, has by any treaty or otherwise, agreed to the exercise of power by His Majesty.

4. Foreigners, other than those referred to above, in the cases prescribed in the order, and not otherwise.

5. British ships with their boats, and the persons and property on board thereof, or belonging thereto, being within the limits of the order. In this connection it should be noted that foreign seamen on the articles of a British ship are tried in a British court for offences against the Merchant Shipping Act, but for other offences they are remitted to the Consular Court of their state in China for trial (except for certain minor offences, where the accused has a choice between the two tribunals). In 1889 the captain of the English ship *Sea Swallow* (an American subject) was killed by a member of the crew, who was a Spanish subject, whilst the ship was in Chinese waters. Both the English magistrate at Shanghai and the Spanish Consul claimed jurisdiction. The question was submitted to the English and Spanish ministers at Peking. The British minister's law officers subsequently advised that extraterritorial jurisdiction in China did not extend to the flag, but was determined by the nationality of the accused. The British minister thereupon surrendered the accused to the Spanish Consul for trial.¹

In connection with the scope of British extraterritorial jurisdiction, questions of nationality sometimes arise. Where a

¹ Moore, *Digest*, ii. pp. 610-611.

person claims British nationality or, having been recognised as possessing British nationality, seeks to repudiate it, the test applicable is obviously the British law of nationality. It is also plain that if a British subject fulfilled the requirements of a foreign nationality law he would lose his British nationality, and acquire that of the foreign state ; but since these laws invariably require some period of residence, the question is not important in practice except with regard to China, which has now adopted a comprehensive nationality law. The question therefore arises, Can a British subject divest himself of British nationality, and acquire that of China ? This question has not yet been tested in British courts in China, but it would seem that there exists no obstacle to the acquisition of Chinese nationality, provided that there is due conformity to the regulations prescribed by the Chinese Law of Nationality. In a case that arose at the British Supreme Court at Shanghai in 1926, a Mr. Kentwall, a barrister, claimed to have become a Chinese subject, and the only objection raised by the Crown advocate was that he was not satisfied that Mr. Kentwall had conformed to the requirements of Chinese law. There is, of course, no doubt that British subjects at the present time can acquire a Chinese domicile, in consequence of which they are immune from the liability to pay English death duties.

The question of domicile was finally settled by the House of Lords in *Casdagli v. Casdagli*¹ in 1919, overruling earlier decisions in *Abd-ul-Messih v. Farra*² and *In re Tootal's Trusts*.³ In the *Casdagli* case, the question was whether a British subject registered at a British Consulate in Egypt (where extraterritorial jurisdiction is exercised by the British Crown) could acquire an Egyptian domicile. The House of Lords held that he could, and that an English court consequently had no jurisdiction to entertain a suit by his wife for dissolution of marriage. The House drew a clear distinction between commercial domicile, which had been considered in *The Indian Chief*, and civil domicile. Lord Finlay in the course of his judgment said :

“ It has often been pointed out that there is a presumption against the acquisition by a British subject of a domicile in such countries as China and the Ottoman dominions, owing to the differences of law, usages, and manners. Before special provision was made in the case of foreigners resident in such countries for the application to their

¹ (1919) A.C. 145.

² 13 A.C. 431.

³ (1882) 23 I. Ch. 532.

property of their own law of succession, for their trial on criminal charges by Courts which will command their confidence, and for the settlement of disputes between them and others of the same nationality by such Courts, the presumption against the acquisition of a domicile in such a country might be regarded as overwhelming unless under very special circumstances. But since special provision for the protection of foreigners in such countries has been made, the strength of the presumption against the acquisition of a domicile there is very much diminished. Egypt affords a very good illustration of this. What presumption is there against the acquisition of an Egyptian domicile by a British subject when the country is under British protection and when the British subject is safeguarded in all his rights in the manner in which I have described? The question is one to be tried on the ordinary principles applicable to such questions of fact. The view that it is impossible in point of law could be supported only on the assumption that the doctrine of extraterritoriality applies to all British subjects, so that though actually in Egypt they are in contemplation of law still in their own country, and that for this reason there is not, and cannot be, the residence in the particular locality necessary for the acquisition of domicile. Any such view as to impossibility appears to be erroneous in principle, and inconsistent with the evidence in this case as to the position of a foreigner resident in Egypt."

On the question of jurisdiction generally, it must be noticed that the Foreign Jurisdiction (Military Forces) Order in Council of April 22, 1927, has curtailed the jurisdiction of the Supreme Court somewhat in respect of offences committed by members of the armed forces of the Crown in China. Apart from this, the jurisdiction of the British Courts in China is as complete as that of the English Courts in England, including civil and criminal jurisdiction, Admiralty, bankruptcy, lunacy, and jurisdiction in respect of certain special offences arising out of treaty. There is now no special procedure for Customs cases. Every treaty port in China has a special King's Regulation dealing with offences against ordinary harbour regulations, *e.g.* explosives within harbour limits, dangerous cargo, letting oil escape from the ship, etc., and these are enforced in the consular courts.¹

¹ The rules agreed upon in 1868 for joint investigation in cases of confiscation and fine by the customs authorities still exist. In practice, however, the customs authorities do not resort to extraterritorial courts for the imposition of fines. For unauthorised trading at closed ports, the ship may be prohibited from trade at Chinese ports in the future by the Customs. For false declarations, the goods may be confiscated. Disputes between the Customs and an importer in regard to the value or classification of goods are referred to a Board of Arbitration comprising a Customs official, a merchant appointed by the consul of the nationality concerned, and a merchant of a different nationality, chosen by the senior consul. The award of the majority is binding on the merchant.

On the general question of the law applicable in consular courts, it must be noticed that the Order in Council provides for the promulgation of various types of subordinate legislation, and section 6 (2) provides for the enforcement of decrees of a special tribunal (which exists at Shanghai) :

“ Where by agreement among the diplomatic representatives in China of foreign States, Regulations have been or are made, and have been or are published in the same manner as King's Regulations are to be published under this Order, for the establishment, control or procedure of a Court of Consuls, or other like Court, to deal with disputes or suits relating to the property or proceedings of any board, committee, association or other like group of persons which has been appointed for public purposes at any treaty port or foreign settlement or concession in China and on which other nations besides Great Britain are represented, and any such Regulations have been or are approved by the Secretary of State, the jurisdiction of the said Court shall not, so far as persons subject to this Order are concerned, be deemed to conflict with this Article, and the Court shall enforce on all persons subject to its jurisdiction the orders and decrees of such Court of Consuls or other like Court.”

As far as municipal regulations are concerned, section 210 states :

“ The Minister may, if he thinks fit, join with the Ministers of any foreign Powers in amity with His Majesty in making or adopting Regulations (to be called Municipal Regulations) for the municipal Government of any foreign Concession or settlement in China ; and as regards British subjects, such joint Regulations shall be as valid and binding as if they related to British subjects only.” ¹

Section 209 empowers the British Minister to make King's Regulations (a) for the peace, order and good government of British subjects in China ; (b) for securing the observance of treaties, in matters of trade, commerce, revenue, or any other matter ; (c) for regulating or preventing the importation or exportation of arms in British ships ; (d) for requiring returns to be made of the nature, quantity and value of articles exported from or imported into China by British subjects, or in any British ship ; (e) for regulating the issue of banknotes in China ; and (f) for regulating the holding of land by corporations in British concessions in China. Article 211 extends the scope of these regulations to the control of police forces in foreign concessions.

¹ See also Kashgar Order in Council, sect. 61 (b) and 62 (b).

There are limits to the punishment to be inflicted for infractions of these Regulations.¹ Both King's Regulations and Municipal Regulations require the approval of the Secretary of State.²

The special offences arising out of treaty obligations are of assistance in determining the nature of a British subject's extra-territorial rights in China. Section 39 lays down the general principle that with the exception of offences especially made by the Order in Council or the subordinate legislation, "any act that would not by a Court of Justice having criminal jurisdiction in England, be deemed an offence in England, shall not, in the exercise of criminal jurisdiction under this Order, be deemed an offence," and further criminal jurisdiction "shall, as far as circumstances admit, be exercised in the principles of and in conformity with English law for the time being." There can be no doubt, therefore, that a British subject may be tried in China for an act of treason committed by him in China.³ To what extent, however, is he bound to respect the sovereignty of China in addition? The answer is, to the extent provided in the Order, and the subordinate legislation, and no further. He, therefore, cannot commit an act of treason against the Chinese Republic, but he may be tried in a British Court for the following offences against the Order :

1. Smuggling, or attempting to smuggle, out of China, any goods on which the Chinese Government has imposed a duty.

2. Importing or exporting (or attempting to import or export) into or out of China any goods with the intention of evading payment of duty.

3. Importing or exporting (or attempting to import or export) goods traffic in which is prohibited by law.

4. Selling goods which are the objects of a Chinese governmental monopoly, without a proper licence.⁴

Section 75 prohibits any British subject from taking part in, or abetting any person taking part in any civil war, in progress in

¹ Section 209 (2), (3), and (4).

² Section 212 (1).

³ In addition, Section 79 provides that "every British subject who has acted or is acting in a manner prejudicial to the public safety, or to the defence, peace, or security of His Majesty's dominions, or of any part of them, shall be guilty of a grave offence against this Order, and may, in addition to, or in lieu of, any other punishment, be ordered to give security for good behaviour or to be deported."

⁴ Section 74.

China, under a penalty of two years imprisonment and/or a fine of £500, and deportation. Section 77 renders punishable any violation of or failure to observe any provision of treaties existing between Great Britain and China, whilst section 80 provides that “every British subject who prints, publishes, or offers for sale, any printed or written newspaper or other publication containing seditious matter, or has in his possession with intent to publish or distribute any such newspaper or other publication, shall be guilty of a grave offence against this Order.” Seditious matter is defined as “matter calculated to excite tumult or disorder, or to excite enmity between His Majesty’s subjects and the Government of China, or the authorities or subjects of any Power in amity with China, being within the limits of this Order, or between the Government of China and its citizens.”

In addition to such infringements of Chinese sovereignty rendered punishable by the Order, there are also certain other special offences. Thus, any insult to any religion observed in China is forbidden by section 82, whilst section 39 (f) declares :

“If any person subject to the jurisdiction of the Court does any act in relation to proceedings in a Chinese Court, or before a Chinese judicial officer, or in a Court or before a judicial officer in China of any State in amity with His Majesty, which, if done in the course of, or in relation to, any proceedings in the Court, would have been punishable as an offence, such person shall be guilty of an offence, and shall be liable, on conviction, to such punishment as he would have been liable to if the offence had been committed in the course of, or in relation to, proceedings in the Court.”

Further, section 78 (1) directs that where by agreement between Ministers of foreign Powers in China, and with the Chinese authorities, sanitary, police, port, or game, or other international regulations have been established, these, after approval by the Secretary of State, may be enforced by British courts in China against British subjects.

Section 76 expressly authorises British courts in China to try British subjects for piracy, wherever committed. It should be noticed that this section relates to piracy in English law. There exists also piracy *jure gentium*, in respect of which British courts may exercise jurisdiction over foreigners committing the offence on the high seas. Moreover, under Article XXIII of the Treaty of Tientsin providing for the surrender of Chinese criminals to

the Chinese authorities, Chinese pirates have not infrequently been surrendered. The nature of the jurisdiction existing in cases of piracy was fully considered in the important Privy Council decision in *Attorney-General for Hong Kong v. Kwok-a-Sing*,¹ in which Kwok-a-Sing was charged with piracy and murder on a French ship bound for Peru. The question then arose whether he was properly tried in Hong Kong, or whether he ought to have been surrendered to the Chinese for trial. The Privy Council held that he was properly tried in Hong Kong.

“ They think that the acts of piracy *jure gentium* with which Kwok-a-Sing was charged may be plainly distinguished from those acts of piracy which they have before stated to be, in their opinion, within the Ordinance and the treaties. If Chinese subjects, starting from, and returning to, Chinese territory, attack a ship of some other nation, whether in harbour or at sea, they, making that territory as it were, the base of their operations, must be held to commit an offence against the municipal law of China, and against the Chinese Government, whether they commit an act of piracy *jure gentium* or not. But if Kwok-a-Sing committed an offence against the municipal law of any nation, he committed an offence against the municipal law of France, to which he was subject at the time, and not against the municipal law of China ; and if he is punishable by the law of China, he is only so punishable because he has committed an act of piracy which, *jure gentium*, is justiciable everywhere. They are of opinion that such an offence is not an offence against the law of China within the meaning of the ordinance.”²

Certain classes of offences are specially mentioned in the Order : for the rest, as was previously noticed, the principles of English criminal law, “ so far as circumstances permit,” apply. Among the former are admiralty offences. As far as these are concerned, the following statutes are applied :

1. The Admiralty Offences (Colonial) Act, 1849.
2. The Admiralty Offences (Colonial) Act, 1860.
3. The Merchant Shipping Act, 1894, Part XIII.³

The extent of the jurisdiction of the Supreme Court at Shanghai under the Merchant Shipping Acts received consideration in the case of the *Maori King* ⁴ in 1909. In 1906 the *Maori King* was purchased in the name of a British subject, Dow,

¹ L.R. 5 P.C. 179.

³ Section 43 (3).

² At p. 198.

⁴ (1909) A.C. 562.

and registered at Shanghai in his name. He subsequently executed a declaration of trust in favour of a Russian firm. In 1908 the British Consul-General at Shanghai filed a petition, based on sections 69 and 76 of the Merchant Shipping Act, 1874, and stating that, as the consular officer within the meaning of section 76, he had seized and detained the ship as liable to forfeiture under section 69 for using the British flag without authority. The Supreme Court at Shanghai thereupon decreed the forfeiture of the ship. The relevant sections of the Merchant Shipping Acts were :

Merchant Shipping Act, 1894.

S. 60. (1) If a person uses the British flag and assumes the British national character on board a ship owned in whole or in part by any persons not qualified to own a British ship, for the purpose of making the ship appear to be a British ship, the ship shall be subject to forfeiture under this Act, unless the assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

S. 76. (1) Where any ship has either wholly or as to any share therein become subject to forfeiture under this part of this Act (a) any commissioned officer on full pay in the military or naval service of Her Majesty, (b) any officer of customs in Her Majesty's dominions ; or (c) any British Consular officer, may seize and detain the ship, and bring her for adjudication before the High Court in England or Ireland, or before the Court of Session in Scotland, and elsewhere before any Colonial Court of Admiralty or Vice-Admiralty Court in Her Majesty's dominions, and the Court may thereupon adjudge the ship with her tackle, apparel and furniture to be forfeited to Her Majesty.

The Privy Council held that section 76 conferred no jurisdiction except upon courts within the dominions of the Crown, and the decree of the Supreme Court at Shanghai was accordingly set aside.

Section 72 of the Order in Council regulates the exercise of coroner's jurisdiction. The court has the powers, and discharges the duties, of a coroner in England, as far as deaths of British subjects within the jurisdiction are concerned. It may also inquire into all deaths of persons at sea on British ships subsequently arising within the jurisdiction, and into deaths of British subjects on foreign ships so arriving. The jurisdiction is exercised, however, with the following provisions :

1. Where a British subject is charged with causing the death,

the preliminary examination may be held at once, without an inquest.

2. Where a British subject is not charged with causing the death, the court shall hold an inquest and take depositions. If, during or after the inquest, a British subject is charged, the deposition must be read over in the presence of the witnesses and of the accused, who shall be entitled to cross-examine each witness, and the procedure shall be as in other cases of preliminary examination. If after the inquest no person is charged, the court registers its opinion of the cause of death.

The offence of perjury, of course, depends upon the Perjury Act, 1911, but section 39 (3) directs that the words "judicial proceeding" in the Act shall be deemed to include a proceeding before any Chinese court, or a court in China of any State in amity with His Majesty.

Special provision exists for the protection of merchandise marks, patents and designs, trade-marks and copyright. For this purpose the following Statutes and Orders in Council are applied :

- (1) The Merchandise Marks Act, 1887.
- (2) The Patents and Designs Acts, 1907 and 1919.
- (3) The Trade Marks Act, 1905 to 1919.

(4) Any Act, Statute, or Order in Council for the time being relating to copyright, or to inventions, designs or trade-marks, of which a copy is kept exhibited in the public offices of the Consulate at Shanghai, and is there open for inspection by any person at all reasonable times. Before any person can be punished, the exhibition must have commenced not less than a month before the act took place, unless the offender can be proved to have had express notice of the Act or Order.

It is further provided, however, that no prosecution shall be instituted by or on behalf of (and no action may be brought by or on behalf of) a foreign complainant unless either (*a*) an arrangement is in force between His Majesty's Government and the Government of the State or Power to which the prosecutor belongs, or (*b*) the court is satisfied that effectual provision exists for the punishment in consular or other courts in China of similar acts committed by the subjects of such State or Power in relation to, or affecting the interests of, British subjects.¹

¹ Section 73.

The Supreme Court has full power to punish for contempt, or interference with its functions ¹ (and also for contempt of other courts in China),² whilst neglect of duty or abuse of authority by officers of the court renders the person offending liable in damages.³

Every British court in China has power to cause to be summoned or arrested and brought before it persons accused of committing offences within the limits of its jurisdiction.⁴

“ For the purposes of criminal jurisdiction every offence and cause of complaint committed or arising within the limits of this Order shall be deemed to have been committed or to have arisen, either in the place where the same actually was committed, or arose, or in any place where the person charged or complained of happens to be at the time of the institution or commencement of the charge or complaint.” ⁵

In cases of murder or manslaughter, however,

“ if either the death, or the criminal act which wholly or partly caused the death, happened within the jurisdiction of a court acting under this Order, that court shall have the like jurisdiction over any British subject who is accused either as the principal offender, or as accessory before the fact to murder, or as accessory after the fact to murder or manslaughter, as if both the criminal act and the death had happened within that jurisdiction ” ⁶ ;

and in cases of offences committed on the high seas, or within the Admiralty jurisdiction, by British subjects, either on British ships or on foreign ships to which they did not belong, the court has jurisdiction as if the offences had been committed within its jurisdiction.⁷ Where an offender escapes from one consular district to another, the consular court of that district may either take cognizance of the case or return the offender to the consular district from which he has escaped.⁸

A person arrested on a warrant must be brought before the court within forty-eight hours unless circumstances unavoidably prevent it.⁹ Where an accused is in custody, he may not be remanded for more than seven days unless special circumstances (which must be recorded) necessitate it, and in no case may there be a remand for more than fourteen days, except for illness or other case of necessity.¹⁰ Where a warrant is issued against a

¹ Section 83.

⁴ Section 40.

⁷ Section 43 (2).

¹⁰ Section 45.

² Section 39 (4).

⁵ Section 41.

⁸ Section 42.

³ Sections 83-84.

⁶ Section 43 (1).

⁹ Section 44.

person on board a British ship, a warrant may be issued for the detention of the ship if the interests of justice require it.¹ The Supreme Court alone may admit to bail for treason or murder ; bail is discretionary for any felony, riot, assault upon an officer in the execution of his duty, or neglect or breach of duty by an officer ; in all other cases the court must admit to bail unless there is good reason for the contrary.²

Treason, murder, and piracy must always be tried in the Supreme Court with a jury. Manslaughter, rape, arson, burglary, housebreaking, robbery with violence, forgery, sodomy, perjury, and other offences where the person accused could not be adequately punished by imprisonment for three months with hard labour or by a fine of £20, or both, must be tried with a jury or assessors.³ The accused must be tried as soon as circumstances reasonably permit.⁴ Where the complaint discloses an offence which does not require to be heard on a charge, the accused may be tried summarily. Punishment may not exceed three months imprisonment, a fine of £20, or both.⁵

A preliminary examination is held where the offence is one requiring trial in or report to another court, where the offence is one which ought to be tried before the same court with a jury or assessors.⁶ The Supreme Court has power to remit persons accused of crime for trial to the Supreme Court of Hong Kong or the Sessions Court at Mandalay.⁷ Persons who have appeared as prosecutors or witnesses at a preliminary examination may, if they refuse to enter into recognizances to appear, be imprisoned until trial. One of the existing defects of extraterritorial jurisdiction is illustrated by the following sub-section :

“ Where the prosecutor or witness is not a British subject, the Court may require him either to enter into a recognizance or to give other security for his attendance at the trial, and if he fails to do so may in its discretion dismiss the charge.”⁸

The court may order the payment of the reasonable expenses of prosecutors, witnesses, jurors, assessors, interpreters, medical practitioners, and others.⁹

A series of sections govern the drafting of charges.¹⁰ As far as punishments are concerned,

¹ Section 46.

² Section 48.

³ Section 49.

⁴ Section 50.

⁵ Section 52.

⁶ Section 53.

⁷ Section 54.

⁸ Section 55 (3).

⁹ Section 56.

¹⁰ Sections 57-62.

“ the Supreme Court may award in respect of an offence any punishment which may in respect of a similar offence be awarded in England, provided that (a) imprisonment with hard labour shall be substituted for penal servitude, and (b) the Supreme Court shall not award a fine exceeding £1000, or in case of a continuing offence, in addition to imprisonment or a fine, or both, a fine exceeding £10 for each day during which the offence continues after conviction.”

A Provincial Court may award imprisonment for not more than twelve months, or a fine of £100, or both, or, in addition, a fine of £2 a day for a continuing offence.¹ Offences against the Order are distinguished as (1) grave offences, or (2) offences simply. The former are punished by a fine of £10, or two months imprisonment, or one month's imprisonment and a fine of £50; the latter are punished by a fine of £5, or one month's imprisonment, or a fine of 50s. and fourteen days imprisonment.²

For assaults the court has power to award damages not exceeding £20.³ A person convicted may be compelled to pay the expenses of the prosecution and imprisonment, whilst a frivolous or vexatious charge may render the accuser liable to pay the expenses of the prosecution.⁴

The direction of the Minister at Peking is required before death-sentences may be carried out.⁵ The judge of the Supreme Court directs where sentences of imprisonment are carried out.⁶ This is usually in a British prison in China, but offenders may be sent to Hong Kong, or some other part of the British Empire.⁷

A British Consular Court has power to authorize the deportation of British subjects in China under the following conditions :
1. Where it is proved that there is reasonable ground to apprehend that a British subject is (a) about to commit a breach of the public peace, or that the acts or conduct of a British subject are or is likely to produce or excite to a breach of the public peace, or (b) is about to act in a manner prejudicial to the public safety, or to the defence, peace, or security of His Majesty's dominions, or of any part of them, or (c) has been guilty of conduct which would in the United Kingdom constitute an offence under the Dangerous Drugs Acts, 1920 and 1923, or under the Vagrancy Acts, or under the Criminal Law Amendment Acts, 1885 and

¹ Section 63.

⁴ Section 67.

⁷ Section 70.

² Sections 64-65.

⁵ Section 68.

³ Section 66.

⁶ Section 69.

1912, the court may bind him over to keep the peace, or for his future good behaviour.

2. Where a British subject is convicted of an offence, the court may order him to give security for his future good behaviour.

3. In either of these cases, if the person required to give security fails to do so, he may be deported, or alternatively ordered to report regularly to a consular officer.

4. A person sentenced to imprisonment for not less than six months may also be deported.¹

Deportation must be to some part of the British Empire, and there are numerous conditions governing the exercise of the power.² Any person convicted of an offence for which he has been charged, or convicted of a summary offence, and sentenced to imprisonment without the option of a fine, may appeal to the Full Court as follows :

(1) Against the conviction, on questions of law, or (with leave of the Full Court or with a certificate of the court below) on questions of fact, or of mixed law and fact, or (with leave of the Full Court) upon any other sufficient ground.

(2) Against the sentence (unless it is fixed by law), with leave of the Full Court.³

Where cases are decided summarily, either party, if dissatisfied, may appeal on a point of law.⁴ In criminal appeals the Full Court follows generally the practice of the Court of Criminal Appeal, and the provisions of the Criminal Appeal Act, 1907, sections 1 (5), 4, 5, 6, 8, 9, 11 (2), 14 (2) (3), 17, and 21.⁵ A judge may also reserve a question of law arising during a criminal trial for the consideration of the Full Court.⁶ From the Full Court there is an appeal in criminal cases to the Judicial Committee of the Privy Council, only with leave of that tribunal.⁷

The provisions of the Fugitive Offenders Act, 1881, and of the Colonial Prisoners Removal Act, 1884, apply to China with the necessary modifications.⁸ In this connection, however, it may be noted that if a British subject accused of an offence committed in China escapes to Japan, there exists no procedure in virtue of which he can be sent back again.

Civil jurisdiction is considered in Part IV of the Order in

¹ Section 89.

³ Section 92.

⁶ Section 99.

² Sections 90-91. See also Sections 159-160.

⁴ Section 93.

⁷ Section 101.

⁵ Section 97.

⁸ Section 103.

Council. The general principle laid down is that in every court this jurisdiction shall be exercised, as far as circumstances admit, in conformity with the principles of English law.¹

This section, however, must be read in conjunction with section 223, which declares that "nothing in this Order shall deprive the court of the right to observe, and to enforce the observance of, or shall deprive any person of the benefit of, any reasonable custom existing in China, unless this Order contains some express specific provision incompatible with the observance thereof."

In some civil matters, *e.g.* those affecting personal status, Scots law is applied to a limited extent in respect of natives of Scotland.² Suits involving £250 or upwards in the Supreme Court must, on the demand of either party, be heard with a jury, and suits involving a lesser amount may be so heard, on the suggestion of a party.³ The Supreme Court may also hear any action with assessors, while a provincial court must do so, if the amount in dispute exceeds £150, and may do so in other cases.⁴

Written agreements to submit to arbitration may be upheld by the courts,⁵ and in any action, if the parties consent, or if the matters in dispute consist wholly or partly of matters of account, or require prolonged examination of documents, or scientific or local examination, the court may refer the whole or part of the issue to the registrar, or a special referee.⁶ It is the settled policy of Great Britain to provide for the extra-judicial settlement of disputes affecting British subjects in China wherever possible, for section 225 declares that "every consular officer shall, as far as there is proper opportunity, promote reconciliation and encourage and facilitate the settlement in an amicable way, without recourse to litigation, of matters of difference between British subjects, or between British subjects and foreigners in China."

British consular courts have bankruptcy jurisdiction in respect of the following persons, resident or carrying on business in China: Resident British subjects and their debtors and creditors, being British subjects, or foreigners submitting to the jurisdiction of the court.⁷

¹ Section 104.

⁴ Section 106.

⁷ Section 112.

² See Section 117.

⁵ Section 109.

³ Section 105.

⁶ Section 110.

The Supreme Court possesses the same jurisdiction as far as circumstances permit, in matrimonial causes, as the High Court in England,¹ with respect to British subjects. This jurisdiction is now without reservations. Formerly it did not extend to dissolution, nullity, or jactitation of marriage.² Since a British subject can now acquire a Chinese domicile, no troubles over questions under this head may now arise.

By section 114 the Supreme Court possesses jurisdiction in respect of the custody and management of the persons and estates of lunatics, to the same extent as is possessed in England by the Lord Chancellor or other judges in lunacy, and also such jurisdiction as is exercised in England under the Lunacy Act, 1890. A provincial court possesses such jurisdiction in lunacy as may be prescribed by Rules of Court, and until these are made, and as far as they do not apply, the same jurisdiction is exercised by a judicial authority and by the Masters in Lunacy under the Lunacy Act, 1890. Sections 5-7 of the Lunatics Removal (India) Act, 1851, are extended to China. In pursuance of these sections, where a guardian, keeper, or curator of the person or estate of a lunatic has been appointed by the Supreme Court, the court may order the removal of the lunatic to any part of the United Kingdom, and may make further orders for his safe custody and maintenance, a copy of the proceedings being sent to the Chancery in England or Ireland, or to the Court of Session in Scotland. Piggott regards the warrant for the exercise of lunacy jurisdiction in China as doubtful,³ but it has already been demonstrated that the treaties are only one source of the extraterritorial jurisdiction exercised by the Crown in China, and eventually the source of the jurisdiction may again be found in the right of protection, which the Crown has never relinquished with regard to British subjects in China.

By section 115 all real or immovable property situate in China, and belonging at the time of his death to any British subject, is to be deemed personal estate, and its devolution or intestacy shall be regulated according to the existing law of England relating to personalty. Since the passing of the Property Statutes in 1925 has abolished the difference in devolution between real

¹ Section 113.

² China Order in Council, 1904, sect. 101. See, on this point, Piggott, *Extraterritoriality*, pp. 142-146.

³ *Op. cit.* pp. 148-149.

and personal property, this section of the order has ceased to be of great importance.

By section 116 the Supreme Court possesses the jurisdiction of the High Court in England in relation to the wills and property in China of deceased British subjects ; and a Provincial Court has power to grant probate or letters of administration where there is no contention respecting the right to the grant. Section 51 of the Conveyancing (Scotland) Act, 1874, is extended to China.¹ This section of the Act provides that the production to a notary public in Scotland of the probate of the will, or other testamentary settlement, of the deceased, issued by the Supreme Court, or of an exemplification of the probate, is as effectual for the purpose of expediting a notarial instrument, or otherwise completing a title to an estate, in land or to any hereditary security, as production to the notary public of the will itself.

Where a Court of Probate in the United Kingdom, or in any British Possession to which the Colonial Probates Act, 1892, extends, has granted probate or letters of administration, or confirmation in respect of the estate of a deceased, the probate, letters, or confirmation may be sealed by the Supreme Court on production, and operate as if granted by the court. The Supreme Court may also require, on the application of a creditor, that, before sealing, adequate security is given for payment of debts due from the estate to creditors in China.²

Where a British subject dies intestate in China or elsewhere, his property in China vests until administration is granted, in the Judge of the Supreme Court. The court within whose jurisdiction any property of the deceased is situate shall, if the circumstances so require, take possession of his property, and put it under the seal of the court (an inventory being made where necessary) and keep it until it can be dealt with according to law.³

An executor administering without obtaining probate within one month after the death or termination of proceedings in respect of probate renders himself liable to a fine of £100.⁴ A person other than an executor, administrator, or officer of the court, unauthorisedly dealing with the property, commits contempt of court, and becomes liable to a fine of £50.⁵ A person appointed

¹ Section 117.

⁴ Section 120.

² Section 118.

⁵ Section 121.

³ Section 119.

executor, and dying without taking probate or failing to appear to take probate, loses all interest in the executorship, and the representation of the testator and the administration of the estate goes as if that person had not been appointed executor.¹

By section 123, where a British subject possesses any testamentary paper or writing of the deceased, he must bring the original into the court within whose jurisdiction the death occurs. Failure to do so within fourteen days renders the offender liable to a fine of £50.

Where the value of the deceased's estate does not exceed £100, the court may administer it without probate or letters of administration, and pay the residue to such persons as it thinks proper.²

By section 125 a person wishing to levy distress for rent may apply to the court to appoint a bailiff, at the same time giving sufficient security to answer for any misconduct of the bailiff.³

From any decision in a Provincial Court involving £25 or more either party may appeal to the Full Court, and in any other case either the Provincial Court or the Full Court may give leave to appeal.⁴ In any action in the Supreme Court there may be an appeal to the Full Court.⁵ There is a further appeal to the Judicial Committee of the Privy Council in the following cases :

1. As of right, from any final judgment of the Full Court in a civil action, where the matter in dispute amounts to £500 or more, or where the appeal involves, directly or indirectly, some claim or question to or respecting property, or some civil right amounting to or of the value of £500 or more.

2. At the discretion of the Full Court, from any other judgment of the Full Court, whether final or interlocutory, if, in the opinion of the Full Court, the question involved is one which by reason of its great general or public importance or otherwise, ought to be submitted to the Privy Council.⁶

Application for leave to appeal must be made within fifteen days from judgment.⁷ The appellant must give security not exceeding £500 within two months for due prosecution of the appeal and for costs.⁸ There are detailed regulations governing the preparation of the record and similar matters.⁹

¹ Section 122.

⁴ Section 126.

⁷ Section 129.

² Section 124.

⁵ Section 127.

⁸ Section 130.

³ Section 125.

⁶ Section 128.

⁹ Sections 132-153.

As far as procedure is concerned, the following Acts are extended to China :

- The Foreign Tribunals Evidence Act, 1856.
- The Evidence by Commission Act, 1859.
- The Evidence by Commission Act, 1885.
- The British Law Ascertainment Act, 1859.
- The Foreign Law Ascertainment Act, 1861.
- The Public Authorities Protection Act, 1893.¹

The scope of these Acts is discussed by Sir Francis Piggott.² Power is also conferred on the Judge of the Supreme Court to make Rules of Court, which require the approval of the Secretary of State, and, so far as they relate to fees and costs, the approval of the Treasury.³

Section 165 provides for the registration of mortgages of lands or houses in China by British subjects at the appropriate consulate. Registration is essential for the mortgage to obtain priority over judgment or simple contract debts contracted before the registration of the deed.⁴ Registered mortgages take effect in order of registration.⁵ The Judge of the Supreme Court may from time to time frame rules for prescribing and regulating the making and keeping of indexes, and of a general index, to the register of mortgages, and searches in those indexes, and other matters connected with mortgages.⁶

The Order contains provisions relating to bills of sale executed by British subjects, and applying to chattels in China.⁷ Every bill of sale must (a) truly state the name, description, and address of the grantor ; (b) truly state the consideration for which it is given ; (c) have annexed thereto an inventory of the chattels included ; (d) state any defeasance, condition, or declaration of trust ; (e) be attested by a creditable witness, whose name and address is stated. Otherwise, the bill is void in China (a) as regards articles omitted from the inventory, in respect of those articles ; (b) in any other case, wholly.⁸ Unless the bill of sale is registered at the proper place, and within the specified time, the bill is void :

1. As against trustees or assignees of the estate of the grantor,

¹ Sections 161-163.

⁴ Section 167.

⁷ Section 170.

² *Op. cit.* pp. 88-97.

⁵ Section 168.

⁸ Section 171.

³ Section 155.

⁶ Section 169.

in or under bankruptcy, liquidation, or assignment for the benefit of creditors ; and

2. As against all sheriffs and others seizing chattels under process of any court, and any person on whose behalf the seizure is made ; but only

3. As regards the property in, or right to, the possession of such chattels comprised in the bill as, at or after the filing of the petition for bankruptcy or liquidation, or the execution of the assignment, or the seizure, are in the grantor's possession or apparent possession.¹

Bills of sale have priority in order of registration.² Chattels included in a registered bill are not in the possession, order, or disposition of the grantor within the law of bankruptcy.³ Where there is an unregistered bill of sale, and within or on the expiration of the time allowed for registration a subsequent bill is granted affecting the same or some of the chattels, for the same or part of the same debt, then the subsequent bill is, to the extent to which it comprises the same chattels and is for the same debt, absolutely void, unless the court is satisfied that the later bill is granted in good faith for the purpose of correcting some material error to the prior bill, and not for the purpose of evading the provisions of the Order.⁴

Re-registration is required every five years⁵ ; transfers of a registered bill need not be registered ; and renewal of registration is not necessary by reason only of the transfer.⁶ The Judge of the Supreme Court has the same powers to make rules as regards the indexing of bills of sale as he has with regard to indexes of mortgages of land.⁷

Companies are dealt with in Part VII of the Order. Subject to the provisions of the Order, the jurisdiction of the court in respect of all British companies carrying on business in China is exercised, so far as circumstances permit, in conformity with the Companies Ordinances of Hong Kong.⁸ These are :

The Companies Ordinance, 1911 (but Section 113 (1) does not apply to China).

The Life Insurance Companies Ordinance, 1907.

The Fire and Marine Insurance Companies Deposit Ordinance, 1917.

¹ Section 174.

² Section 175.

³ Section 176.

⁴ Section 177.

⁵ Section 178.

⁶ Section 182.

⁷ Section 186.

⁸ Section 187.

The Consul-General at Shanghai is the Registrar of Companies at Shanghai.¹ Where the general or substantial control of the business of a company incorporated under the Ordinance of 1911 is exercised by a person or persons ordinarily resident within the limits of the China Order, the company is, irrespective of the place at which the Board of Directors may meet, or of any other circumstances, a company whose operations are directed and controlled from a place within the limits of the Order, and it is therefore a "China Company."² In all matters relating to a Hong Kong China Company the jurisdiction of the Supreme Court and of the Supreme Court of Hong Kong is concurrent, the two courts being in all respects auxiliary to one another.³ Where proceedings are instituted in the Supreme Court at Shanghai for winding up a Hong Kong China Company, and it appears that the principal part of its business is carried on in Hong Kong, the Supreme Court may transfer the proceedings to the Supreme Court of Hong Kong.⁴ The Supreme Court enforces within the limits of its jurisdiction any order made by the Hong Kong Supreme Court in the courts of proceedings winding up a Hong Kong China Company.⁵

The constitution of China Companies is regulated by sections 194-202 of the Order. The majority of the directors must always be British subjects residing within the limits of the Order, and no person other than such a British subject shall ever act as managing director or in a similar position, or otherwise control the company.⁶ Only a British subject may act as auditor to the company,⁷ or as liquidator or as receiver or manager on behalf of the debenture holders.⁸ This last section extends to any British company. All the necessary documents required by the Companies Ordinance must be filed with the Registrar of Companies at Shanghai.⁹ The registered office of the China company must be within the jurisdiction of the Supreme Court.¹⁰ All shares issued must be either fully paid up or else paid for in full before the expiration of a specified period not exceeding three months after allotment. Shares issued in any other fashion are forfeited to the directors, who may sell, re-allot, or otherwise dispose of them.¹¹ A China company limited by guarantee

¹ Section 189.

⁴ Section 192.

⁷ Section 195.

¹⁰ Section 198.

² Section 190.

⁵ Section 193.

⁸ Section 196.

¹¹ Section 199.

³ Section 191.

⁶ Section 194.

⁹ Section 197.

requires the consent of the Minister, who may require as a condition precedent that no person other than a British subject shall be a member, or that any member of the company who is not a British subject shall deposit adequate security for his guarantee in court.¹

Every British company with a place of business within the jurisdiction of the Supreme Court is required to fulfil the following conditions :

1. State the country of incorporation in its prospectus.
2. Conspicuously exhibit in every place where it carries on business within the jurisdiction of the Supreme Court the name of the company and the country of incorporation.
3. Mention legibly the name of the company and the country of incorporation in all bill-heads and letter-papers, and in all advertisements and other official publications of the company.²

British limited companies other than China companies, with a place of business in China, and possessing a designation in Chinese characters, must also add the equivalent in characters to " Limited Company " to their Chinese names.³

Part VIII of the Order contains a number of regulations relating to foreign subjects and tribunals which will be discussed in a subsequent section dealing with the defects of extraterritorial jurisdiction in practice. Part X provides for the registration of British subjects at the appropriate consulate, and annual re-registration. There is a register of British subjects at every British consulate in China. Any British subject who neglects to obtain registration is not entitled to be recognised or protected as a British subject in China, and is liable to a fine of \$20 for each failure to register, but he remains, although unregistered, subject to the jurisdiction of British courts in China.⁴ Any company, incorporated or registered in the United Kingdom or any British possession, and carrying on business in China must also be registered at the appropriate consulate in a separate register.⁵ Annual renewal of registration is not necessary, but renewal is required when there is any change in the name of the company.⁶ Section 221 (1) provides that " a company shall not be entitled to be recognised or protected as a British company unless it is registered under this Order, but shall, although not so registered,

¹ Section 200.

⁴ *Ibid.*

² Section 203.

⁵ Sections 215-218.

³ Section 203.

⁶ Section 220.

be subject to the jurisdiction of His Majesty's Courts in China." These provisions regarding registration do not apply to China Companies.¹

V. THE LAW APPLIED IN AMERICAN CONSULAR COURTS IN CHINA ²

The organisation of American Consular Courts in China has already been sketched. It remains to consider very briefly the law applied in those Courts. On this point, section 4086 of the Revised Statutes (re-enacting the same provision of the Acts of 1848 and 1860) provides that

"jurisdiction in both criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute said treaties, respectively, and as far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law nor the law of equity or admiralty nor the Statutes of the United States furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall by decrees and regulations which shall have the force of law, supply such defects and deficiencies." ³

Acts of Congress, however, contain little substantive private law, but in some cases Congress has enacted bodies of statute law for special areas subject to its exclusive legislative authority. In a number of cases, therefore, and more especially in *Biddle v. United States*, decided by the United States Circuit Court of Appeals in 1907, on appeal from the United States Court for

¹ Section 222.

² The first part of this section is based on portions of chaps. xxiv. and xxxvii. of Dr. Willoughby's *Foreign Rights and Interests in China*, to which the reader is referred. Moore's *Digest*, vol. ii. paras. 262-266, should also be consulted.

³ The United States has never applied the *protégé* system in China. In 1872 the American Consul at Canton exercised criminal jurisdiction over a citizen of New Granada (Colombia). The Department of State, however, declared that the Consul had no jurisdiction, even with the concurrent consent of the accused and of the Chinese official (Moore, *Digest*, ii. p. 597; see also p. 599, where the same attitude is adopted as regards Swiss citizens).

China, it has been held that statutes enacted by Congress for the District of Columbia and the Territories of the United States, are applicable to China. Following this, the United States Court for China, in *United States v. Allen*, held that even if such statutes enacted for the special areas were expressly limited in their application to those special areas, nevertheless American tribunals could extend their application to China, although in *United States v. Diaz* it was held that a general act of Congress takes precedence of a statute for a particular area, in application. As far as the application of the common law is concerned, since that varies from State to State, it has been determined that this extends to China as it existed at the time of the separation of the American colonies from England. Equity and admiralty law, however, being federal products, are extended as they exist at present. As far as Special Decrees and Regulations are concerned, these relate to procedure, and are promulgated by the judge of the United States Court for China.

In the matter of domicile, American Courts reached the same conclusion as English Courts somewhat earlier. In the case of *In re Allen's Will*, decided in 1907, the United States Court for China held that it was possible for an American citizen to acquire a Chinese domicile, and in the later case of *Mather v. Cunningham*, the Supreme Court of Maine reached the same conclusion.

The United States Court for China now exercises probate jurisdiction, and administers the estates of Americans dying in China. In distributing the personalty of an American citizen dying intestate, the Federal Act of 1901 for the District of Columbia is applied. Section 2 of the Act of June 30, 1906, confers on the Judge of the United States Court a power of supervision and control over the consular jurisdiction in respect of the estates of American citizens dying in China.

The United States Court also has jurisdiction in all matters relating to the validity of a marriage, and in divorce. Moreover, the Court has jurisdiction in bankruptcy, applying the Federal Bankruptcy Act of July 1, 1878, and also the Voluntary Assignment Act of Congress of March 3, 1901.

As far as American Corporations in China are concerned, the United States Court has extended the Corporation Act of Congress of March 2, 1903, to China, but this has now been

superseded for China by the China Trade Act of September 19, 1922. The Act extends to the whole of China, Hong Kong, and Macao. It provides that five or more persons, of which a majority must be American citizens, may form a District of Columbia Corporation for the purpose of trading in China. The Articles of Incorporation must be filed with the Secretary for Commerce of the United States, with an application for a certificate of incorporation. The Articles must state the name of the company; its principal office (which must be in the District of Columbia); the nature of its business; the amount and classes of authorised capital; the duration of the company (which may not be for more than twenty-five years, with a possibility of renewal); the names and addresses of the members, designated as temporary incorporators (a majority must be American citizens, and one at least must reside in the District of Columbia); and the fact that 25 per cent. of the capital has been paid in cash or in real or personal property.

Companies incorporated under the Act may not indulge in banking or insurance business. Shares must be issued at par, and must be fully paid up. The Federal District Courts and the United States Court for China have jurisdiction over the activities of the company. The American Secretary for Commerce appoints a China Trade Act Registrar, with an office in China, to whom the companies formed are responsible.

The object of the Act of 1922 was to make provision for American Companies doing business in China in the same way as the China Orders in Council and the Hong Kong Companies Ordinance provided for British China Companies. The Act did not entirely succeed, however, largely because the American China Companies were only partially exempt from Federal taxation, which exempted only from income tax stock in American China Companies held by Chinese or Americans resident in China, provided that the moneys so privileged were distributed annually as special dividends. On the other hand, a British China Company pays no income tax on the company's annual profits, nor do British subjects, being shareholders in British China Companies, and not resident in the United Kingdom, pay income tax on their dividends from the companies. Accordingly, on February 26, 1925, an Act to amend the Act of 1922 was passed making, *inter alia*, the following alterations :

1. The number of incorporators was reduced from five to three.

2. The temporary directors mentioned in the Articles of Incorporation must be three at least, a majority of whom must be American citizens during their tenure of office.

3. The limitation of the nature of the business to be carried on was extended to include the prohibition of any shipping activity, unless the controlling interest in the company is held by American citizens.

4. Certain changes were made in the requirements preceding incorporation.

5. Every China Trade Corporation is required to maintain an accredited agent upon whom legal processes may be served in the district of Columbia.

6. Every company to be created in the future for the purpose of trading in China is required to be incorporated under the China Trade Act ; and finally,

7. By sections 11 and 12 of the China Trade Amendment Act, sections 263 and 213 of the Revenue Act of 1924 were amended to read as follows :

“ Sec. 263 (a) That for the purpose only of the tax imposed by Section 230 there shall be allowed, in the case of a corporation organised under the China Trade Act, 1922, a credit of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in Section 217) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date : provided, that in no case shall the amount by which the tax imposed by Section 230 is diminished by reason of such credit exceed the amount of the special dividend certified under subdivision (b) of this section.

“ (b) Such credit shall not be allowed unless the Secretary of Commerce has certified to the Commission (1) the amount which, during the year ending on the date fixed by law for filing the return, the corporation has distributed as a special dividend to or for the benefit of such persons as on the last day of the taxable year were resident in China, the United States, or possessions of the United States, or were individual citizens of the United States or China, and owned shares of stock of the corporation, (2) that such special dividend was, in addition to all other amounts, payable or to be payable to such

persons or for their benefit, by reason of their interest in the corporation, and (3) that such distribution had been made to or for the benefit of such persons in proportion to the par value of the shares of stock of the corporation owned by each ; except that if the corporation has more than one class of stock, the certificates shall contain a statement that the articles of incorporation provide a method for the apportionment of such special dividend among such persons, and that the amount certified has been distributed in accordance with the method so provided."

" Sec. 213 (b) (13) In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organised under the China Trade Act, 1922, if, at the time of such distribution, he is a resident of China, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him."

The effect of the amendment to the subsection is to free the funds specified from the liability for income tax.

The United States exercises a somewhat wider jurisdiction over foreign seamen on American vessels in Chinese waters than is exercised by British Courts in China. In 1875 the British and American Governments jointly agreed that jurisdiction over seamen serving on board foreign vessels of war should be assumed by the nation in whose service they were engaged.¹ As far as merchant vessels are concerned, the American attitude was defined as follows :

" While in some respects it would be desirable that jurisdiction over such offences committed by seamen serving on American vessels should be exercised by the Consuls of the United States, it is not deemed advisable to issue any instructions in relation thereto.

" When, however, such an offender, being a member of the crew of an American vessel, is a subject or citizen of a country having no treaty engagement on this question with China or Japan, or where the consul of the nation to which such person may belong shall decline to assume jurisdiction over him for the offence charged against him, it is the opinion of this Department that the consular officers of the United States may properly assume jurisdiction in the case.

" In reference to offences committed on shore in China and Japan, by persons enlisted or serving on board national vessels of war, jurisdiction in such cases, in the opinion of this Government, should be remitted to the consuls of the country under whose flag the offender is serving, on the ground that all persons who have taken service under a Power, are, for the time being, under the jurisdiction of that Power exclusively and amenable to its tribunals." ²

¹ Moore, *Digest*, ii. p. 665.

² *Ibid.* pp. 605-606. Foreigners in Chinese service are obviously not comprehended within this last statement.

In 1881 Mr. Blaine, Secretary of State, wrote :

“The position taken by the Government of the United States . . . is, that a foreign seaman duly enrolled on an American merchant vessel is subject to the laws and entitled to the protection of the United States to precisely the same extent that a native-born seaman would be, during the period of his service ; that although not an American citizen, he is unquestionably an American seaman.”¹

In 1880 John Ross, a British subject, being a seaman on an American ship, the *Bullion*, killed a fellow-seaman on the ship in Yokohama harbour. He was tried by the United States Consular Court and sentenced to death. This was later commuted to imprisonment for life.²

VI. PROTECTION OF INDUSTRIAL PROPERTY IN CHINA

The adequate protection of industrial property in China is a problem of considerable complexity, resulting partly from the fact that China is not a member of the International Union for the Protection of Industrial Property, and partly from the existence of extraterritoriality. The extent to which trade-marks, copyrights, designs, and patents of British subjects and foreigners are protected by the British Order in Council of 1925 has already been indicated. Other extraterritorial Powers have enacted similar regulations. The protection thus afforded is supplemented to a certain extent by treaty provisions. Article VII of the treaty of 1902 between Great Britain and China declares that as Great Britain protects Chinese trade-marks against infringement by British subjects, China will protect British trade-marks against infringement by Chinese subjects, and will, moreover, establish offices where foreign trade-marks may be registered for a reasonable fee. Article V of the treaty between Japan and China of the following year makes similar provision for the protection of trade-marks, and extends it to copyrights. Articles IX, X, and XI of the treaty of 1903 between the United States and China, in more comprehensive terms, make provision for the protection in China of American trade-marks, copyrights, and patents. All other treaty Powers enjoy the protection so afforded, however, in virtue of the “Most Favoured Nation” clause.

As far as copyright is concerned, the protection afforded in

¹ Moore, *Digest*, ii. p. 607.

² *Ibid.* p. 608.

the American treaty has been found by experience to be incomplete, since it only protects copyright in "any book, map, print or engraving especially prepared for the use and education of the Chinese people, or translation into Chinese of any book" for ten years. Accordingly a great many works are outside the scope of the article. Moreover, the Chinese Copyright Law of 1912 does not protect foreign works, although in some cases local authorities have issued supplementary regulations protecting foreigners.¹

As far as the extraterritorial Powers themselves are concerned treaties between France and Japan in 1907, and between the United States and Japan in 1908, and exchange of notes between France and the United States in 1911, guarantee mutual protection of copyright in extraterritorial courts.

In spite of the protection guaranteed by treaty for foreign patents, no patent law of any type has yet been promulgated by China, and patents accordingly remain without legal protection from infringements by Chinese. As regards treaties, Japan and the United States (1908), France and Japan (1909), Russia and Japan (1913), Russia and Sweden (1913), and the United States and Sweden, by an exchange of notes of February 26 and March 7, 1913, have undertaken mutually to protect patents belonging to their nationals in extraterritorial courts in China. As Russia no longer possesses extraterritorial rights in China, the two treaties to which Russia is a party are now valueless to prevent infringements of patents by Russian subjects in China.

The subject of trade-marks is a little more complicated. In pursuance of the treaty obligations, China promulgated a Trade-marks Law in 1904, and fresh regulations in 1906. These, however, were unacceptable to the Powers, and were accordingly not enforced. Various provincial authorities, however, afforded local protection to foreign trade-marks, and provisional offices for the registration of foreign trade-marks were opened by the Commissioners of Customs. The registration was not altogether satisfactory, however, as in some cases the same trade-marks were registered by more than one firm.² An important case in connection with foreign trade-marks arose at the Shanghai Mixed Court in 1915, when an American firm sought to restrain a Chinese firm from selling a Japanese product, manufactured by

¹ Willoughby, ii. pp. 905-906.

² Willoughby, *op. cit.* p. 911.

a Japanese firm, using as its trade-mark "Vaseline," which the American firm had duly registered in China. The Japanese Consul-General objected to the jurisdiction of the Mixed Court, on the ground that a certificate of registration of the trade-mark had been granted to the Japanese firm in Tokyo. The Japanese trade-mark was not registered in China. The American company had not registered its trade-mark in Japan, and therefore was not covered by the treaty between the United States and Japan of May 19, 1908, which applied only where the national of one country had registered his trade-mark at a proper office in the other. On the other hand, China had undertaken to protect Japanese trade-marks in China, and the same undertaking applied also to the United States. In effect, therefore, each extraterritorial Power was claiming protection from China against infringements, nominally by Chinese merchants, but actually by the manufacturers of the other extraterritorial Power. There was also no doubt that the American firm were the prior users of the trade-mark. As the American Minister put it,

"the fundamental error in the position taken by the Japanese Government in the present case seems to lie in the assumption that registration of trademarks in Japan does not merely constitute a basis for judicial procedure in Japanese domestic and extraterritorial courts, but that it creates in favour of its nationals an abstract and absolute property right enforceable even under Chinese jurisdiction without regard to the requirements of Chinese law. The Legation considers that if this contention were conceded it would render potentially subject to Japanese law and jurisdiction the claim of Japanese subjects to use in China any American trademarks which they might find it expedient to adopt by registration at home, and would effectually annul the only protection for American industrial property rights which now exists in China."¹

In the subsequent judgment delivered by the Mixed Court the American view was in the main adopted.

In 1923 China promulgated a Trade-mark Law, and supplementary regulations. These have only received the qualified approval of the extraterritorial Powers. Disputes regarding registration are decided by three examiners, appointed by the President of the Trade-mark Bureau, from the decision of whom an appeal lies to the Ministry of Agriculture and Commerce, and hence to the Administrative Court. Foreign rights are thus

¹ Willoughby, pp. 915-916.

determined by Chinese law in Chinese Courts, and this applies equally to foreigners possessing extraterritorial rights and to foreigners without them.

As far as protection between extraterritorial Powers is concerned, treaties exist for the mutual protection of registered trade-marks in extraterritorial courts in China between the following Powers :

- (1) Belgium and the United States.
- (2) Great Britain and Denmark.
- (3) Great Britain and France.
- (4) France and Japan.
- (5) France and the United States.
- (6) Great Britain and Germany.
- (7) Germany and Russia.
- (8) Germany and the United States.
- (9) Great Britain and Belgium.
- (10) Great Britain and Italy.
- (11) Great Britain and Portugal.
- (12) Great Britain and Russia.
- (13) Great Britain and the United States.
- (14) Italy and the United States.
- (15) Japan and Russia.
- (16) Japan and the United States.
- (17) The Netherlands and the United States.
- (18) Russia and Belgium.
- (19) Russia and France.
- (20) Russia and Sweden.
- (21) Sweden and the United States.

Of these, Nos. 6, 7, 8, 12, 15, 18, 19, 20 are now inoperative as regards trade-marks in China owing to the abolition of extraterritorial rights of one or both contracting parties.

VII. THE OPIUM QUESTION AND EXTRATERRITORIALITY

The connection between the jurisdiction issue and the opium question prior to the first Anglo-Chinese war has already been noted. The opium trade was not legalised by the Treaty of Nanking, and British subjects secured extraterritorial rights in China. The resulting legal position, therefore, was that British subjects could be punished neither in British nor Chinese courts for opium smuggling, but that Chinese authorities had the power to confiscate ship and cargo. At first, indeed, there seems to

have been some co-operation between British consuls and Chinese officials in the matter, and in 1843 three cases are recorded, the *Amelia*, the *Maingay*, and the *William IV*—in which the British Consul at Shanghai inflicted fines, confiscated the opium, and handed it over to the Chinese authorities. It is an interesting commentary upon the activities of nationals of other Powers, however, that in 1852 the British Government announced that, although opposed to opium smuggling, it would not permit any coercion of British merchants that was not extended to those of other nationalities.¹

The Treaty of Tientsin in 1858 legalised the importation of opium, and a special duty was laid on it. As a result a number of cases came before the Mixed Court at Shanghai for consideration. The right of the Chinese Government to prosecute Chinese residing in the settlement for evasion of the duties was repeatedly enforced.²

In 1879 the great Swatow Opium Guild case occurred. In a letter to the Shanghai Taotai, the British Consul protested against the activities of the Guild, and alleged that, being in the nature of a monopoly, it was violating treaty stipulations. Article V of the Treaty of Nanking had abolished Chinese monopolist organisations at treaty ports. On the strength of this, two British merchants brought an action against the Guild in the Mixed Court. There were numerous technical irregularities in the conduct of the case. In the first place, the Guild being situated at Swatow was beyond the jurisdiction of the Court. Moreover, both civil and criminal causes were mixed in one action. No final decision was ever reached in this curious case.³

In 1906 an Imperial edict prohibited both opium-smoking and the importation of the drug, and the Provisional Criminal Code of 1912 imposed penalties for both offences.⁴ The Mixed Court was now placed in an exceedingly difficult position, as the opium traffic was legalised by treaty and prohibited by Chinese

¹ Lanning and Couling, *History of Shanghai*, p. 334. The basis of consular activity in these three cases is not by any means clear. Although the opium traffic was not legalised by the Treaty of Nanking, the smuggling could hardly be said to be an offence against the treaties. The early consular ordinances ignore opium.

² For examples, see Kotenev, *Shanghai : its Municipality and the Chinese*, p. 285.

³ Kotenev, *op. cit.* pp. 274–276.

⁴ Indian opium was protected temporarily by agreements of 1907 and 1911 with Great Britain.

law. Moreover, within the settlement the traffic was still permitted by the Municipal Council, although increased restrictions were shortly afterwards imposed. In accordance with these, heavy fines were imposed for infringements of local regulations at the Mixed Court.¹

In 1916 the Yunnan Opium case occurred. Chang Yo-tseng, Chinese Minister of Education, and several Yunnanese Members of Parliament arrived at Shanghai with a large quantity of luggage. At the request of the local magistrate, the Customs officials passed the luggage without scrutiny, on account of the official character of the owners. The police, however, suspecting that opium was being smuggled, seized the trunks, to the number of sixty, and opium to the value of 500,000 taels was discovered. Seven persons, all Chinese officials, were arrested, and six were charged at the Mixed Court with the importation of prohibited opium. Of these two were declared not guilty, three were sentenced to terms of imprisonment, and one was fined.² This case incidentally illustrates the fact that extensive traffic in the drug still continued in China, and that Chinese officials still participated in it.

It is now necessary to consider the question of opium in consular courts in China. Article II of the Treaty of 1880 between China and the United States prohibits the opium trade between the two nations in 1886. Mr. Bayard, American Secretary of State, informed the American minister to China that

“the enforcement of the prohibition as to American citizens in China is expressly dependent upon the enactment of appropriate legislation on the part of the United States. It is only such legislation that consuls of the United States in China can enforce judicially. In the absence of such legislation, it is, to say the least, doubtful whether a consul could lawfully interfere to prevent an American citizen from doing an act not in itself contrary to international law or the domestic law of China.”³

In 1887 the necessary Act was passed, providing for forfeiture of the opium by consular courts.

In spite of the fact, however, that other extraterritorial Powers enacted legislation applicable to the opium traffic in China, the fact remained that the penalties were quite inadequate to repress the offences. Thus in February 1918 A. M. T. Woodward was charged

¹ Kotenev, *op. cit.* p. 280.

² *Ibid.* pp. 283-284.

³ Moore, *Digest*, ii. p. 647.

with unlawfully importing opium to the value of G.\$200,000, before the United States Court for China. He pleaded guilty, and was fined G.\$500, the maximum penalty.¹ Sometimes, too, an assertion of foreign ownership had the effect of suspending proceedings undertaken against Chinese offenders. Thus in May 1921 Sung Ah-nyi was charged by the municipal police before the Mixed Court at Shanghai with being in possession of 117 lbs. of smuggled opium. During the hearing L. E. Jovino, an Italian subject, asserted that the opium belonged to him, whereupon the case was dismissed, as the court had no jurisdiction. Two years later Jovino was accused before the Italian Consular Court with the illegal possession of 649 lbs. of opium. He was fined 1000 lire and sentenced to two months imprisonment.² The sentence was suspended for two years, however, on the defendant undertaking to refrain from further offences, on the ground of it being "defendant's first offence and the necessity of his supporting a large family." In view of the episode at the Mixed Court in 1921, the second reason would appear to be sounder than the first.

In 1923 the municipal police were searching premises occupied by Kwan Chang, a Chinese, when they found a certificate on the wall, proclaiming him to be a Portuguese subject. The search was thereupon suspended, pending an application to the Portuguese Consulate. Both the Consul-General and the Vice-Consul were away, however, and the acting Consul was unable to take any action because the Consul-General, before his departure, had left instructions that before a warrant was issued to the municipal police, a bond of indemnity for any damage to premises or business done by them must be obtained. The police being unable to give this undertaking, no further steps could be taken.³ This episode well illustrates the evils resulting from indiscriminate registration of Chinese with foreign consulates—a practice of which China has frequently complained and which the Extra-territoriality Commission regarded as undesirable.⁴

In 1906 both the production and consumption of opium in China had been prohibited by Imperial decree. Three years later an International Opium Commission sat at Shanghai, and besides

¹ *Shanghai : its Municipality and the Chinese*, p. 285.

² Kotenev, *op. cit.* p. 286.

³ *Ibid.* pp. 286-287.

⁴ *Report*, p. 95.

recommending that the Powers with interests in China should take effective action by controlling and limiting the manufacture and distribution of morphine, the Commission also recommended that they should extend their various pharmacy laws to their nationals enjoying extraterritorial rights in China.¹ Two years later an Opium Conference was held at The Hague to carry the matter a stage further, and to propose measures for the gradual suppression of the illegal manufacture and sale of all drugs. With the general recommendations of the Conference it is not proposed to deal. Chapter IV of The Hague Opium Convention of 1912, however, deals with the question in relation to extraterritoriality. By Article 15 the Powers enjoying extraterritorial rights in China agreed to take the necessary steps to prevent the smuggling of opium, morphine, and cocaine into China. In the following Article China agreed to promulgate pharmacy laws regulating the sale and distribution of the drugs, and the treaty Powers undertook to examine these laws, and, if approved, to apply them to their own nationals in China. By Articles 17, 18, and 19 the Powers undertook, in conjunction with China, to undertake certain other restrictive measures. There was considerable delay in ratifying this Convention, however, in spite of the fact that two other Opium Conferences were held at The Hague in 1913 and 1914, with the object of expediting matters. By Article 295 of the Treaty of Versailles, however, all signatory Powers acceded to the Convention of 1912.² Similar provisions appear in the treaties of peace with Austria, Bulgaria, Hungary, and Turkey.

Following the establishment of the League of Nations, an Advisory Committee on Traffic in Opium was appointed, and two conferences have been held at Geneva in 1924. Meanwhile, in 1912, China, in the Provisional Criminal Code, had penalised illegal traffic in opium, and in 1917 the production of the drug for other than medical uses was absolutely prohibited.³ In 1914 a Chinese ordinance forbade the sale of poppy-seeds,⁴ and on December 31, 1920, the law relating to morphia was declared to be in force. This law punishes the illegal manufacture and sale of morphia and similar narcotics.⁵ Professor Willoughby also

¹ Willoughby, *op. cit.* ii. pp. 1100-1101.

² *Ibid.* pp. 1110-1112.

³ *Ibid.* p. 1129. There is no mention of this in the Extraterritoriality Commission's Report.

⁴ *Report*, p. 32.

⁵ *Ibid.* p. 30.

notices that on August 2, 1924, the Chinese Government submitted to the Opium Advisory Committee of the League a copy of the "Provisional Regulations for the Registration of Chinese and Foreign Pharmacies,"¹ but there is no trace of these in the Extraterritoriality Commission's Report, and among matters unprovided for by law, the Commission notices "practice of pharmacy and medicine," adding that this has not yet been provided for, even in draft form.²

At the sixth session of the Advisory Committee, the Chinese representative endeavoured to maintain that China required full power to enforce her laws over foreigners if she was to attempt to suppress the opium traffic adequately. The British representative, however, pointed out that a consideration of extraterritoriality was not within the scope of the Commission, and it was further pointed out that Great Britain (along with other Powers) had enacted regulations to punish illegal traffic in drugs.³ Sir Malcolm Delevingne added, however, that it might profitably be considered how far existing extraterritorial regulations were adequate to suppress the traffic. Finally, the Advisory Committee adopted the following resolution :

"That Powers having extraterritorial rights in China should, if they have not already done so, make regulations, the breach of which shall be punishable by the adequate penalties, to control the carrying on by their nationals in China of any trade in the drugs to which Chapter III of the Hague Convention applies. The Advisory Committee further recommends that copies of such regulations should be sent to the Secretariat of the League."

This recommendation was approved at the thirteenth session of the Council of the League.⁴

At the Second Opium Conference held at Geneva in 1924 the Chinese Delegation submitted a memorandum pointing out that the Chinese Government would do all in its power to suppress the illegal traffic, and that for this purpose it had enacted stringent laws, adding :

"China has sought loyally to fulfil the obligations thus assumed by her, but she has thus far failed to receive full co-operation upon the part of the other Powers as regards the action to be taken under

¹ *Op. cit.* p. 1129, sect. 74.

³ *E.g.* China Order in Council, 1925.

² *Report*, p. 49.

⁴ Willoughby, pp. 1129-1131.

Article XVI ;¹ namely, that Diplomatic Representatives of those Powers at Peking should examine the pharmacy laws regulating the sale and distribution of morphine, cocaine, their respective sales and other substances referred to in Article XIV of the Convention, enacted by the Chinese Government and communicated to them, with a view, if found acceptable, to applying them to their own nationals residing in China, and, furthermore the Chinese Delegation is constrained to say with reference to the laws of some of the Powers, for the control of their own nationals in China, that the penalties they impose seem scarcely severe enough efficiently to attain the purposes for which they have been enacted, nor are they, in all cases, vigorously and uniformly enforced by the officials of the Powers concerned. This observation applies also to laws for the punishment of smuggling of opium and narcotic drugs into China."

The Chinese Delegation therefore made the following proposals :

1. That the existing regulations of the treaty Powers should be strengthened to prevent the illegal traffic.

2. That the Chinese Pharmacy Laws should be examined by the treaty Powers, with a view to their extension, in extra-territorial courts, to nationals of treaty Powers.

3. That the treaty Powers should either apply Chinese laws to their nationals for the suppression of the cultivation, transport, or sale of opium, or enact adequate laws, providing that violations of them shall be punishable by fines whose amounts shall be multiples of the values at the places where the offences are committed, and in addition that imprisonment, and subsequently deportation, with a prohibition to return to China, should be inflicted.

4. That the treaty Powers should either apply Chinese laws to their nationals in China for the prevention of smuggling the drugs, or strengthen their own laws in the manner indicated in the previous suggestion.

5. That if the smuggling or sale of the drugs occurs with the connivance of the officers of a ship, the ship also shall be subject to a similar fine.

6. That in trials of nationals of extraterritorial Powers for these offences, Chinese assessors shall be present, the trial to take place in open courts.²

¹ *I.e.* of Chapter IV of the Hague Convention of 1912.

² Willoughby, pp. 1131-1135.

The memorandum was discussed, and it was decided that a conference of extraterritorial Powers should consider the question. One meeting of this conference was held, at which the British Order in Council dealing with trade in narcotics by British subjects in China was considered, together with the revised Chinese proposals. The conference was then adjourned, and the Chinese Delegation withdrew shortly afterwards.¹ No further steps have so far been taken, but it is to be hoped that the treaty Powers will shortly agree to enact the necessary regulations, imposing heavier penalties upon those engaging in the illegal traffic, notwithstanding the fact that existing conditions in China render any effective co-operation on the part of the Chinese Government virtually impossible.

VIII. EXTRATERRITORIALITY IN TIME OF WAR

If extraterritoriality were derived solely from treaties, it would be obvious that when the two contracting Powers were at war, the foundation of the right would disappear. Even where it is not based upon treaties, however, extraterritoriality, being derived from the right of protection, is terminated by the outbreak of hostilities between the States concerned. Thus, when China declared war on Germany and Austria-Hungary in 1917, she formally terminated the extraterritorial rights of those States in China. Problems of considerable theoretical complexity arose in 1881, and again in 1894 and in 1905, concerning the effect of war upon extraterritorial rights. During the war between France and China in 1881, French subjects accused of committing offences were tried by the Russian Consul at Shanghai. During the Chino-Japanese War in 1894 (when each enjoyed extraterritorial rights in the territory of the other) the United States used her good offices for the protection both of Japanese in China and of Chinese in Japan. In August 1894 two Japanese were arrested in the French Concession at Shanghai, and were charged with being spies. They were sent to the American Consul, who disclaimed jurisdiction and sent them to the Mixed Court. The American Secretary of State subsequently held that the Japanese were fully subject to Chinese jurisdiction.²

¹ Willoughby, pp. 1135-1137.

² Moore, *Digest*, ii. pp. 597-598.

As far as extraterritorially protected foreigners are concerned, the following cases illustrate the position :

During the Chino-Japanese War, when Great Britain enjoyed extraterritorial rights in both China and Japan, the Japanese Government attempted to exercise the belligerent right of search on the British ship *Gaelic* for contraband. The captain objected, urging that no one could search the vessel without a permit from the English consuls. The Japanese then forcibly searched the ship, following which correspondence occurred between the British and Japanese Governments, the Japanese right of search being eventually admitted.¹

In 1894 two neutral (American) persons enjoying extraterritorial rights in Japan entered the Chinese service for the purpose of destroying Japanese warships. They arrived at Kobe in the French vessel *Sydney*, and were arrested by the Japanese, the *Sydney* being detained. The French and American consuls protested. The two Americans were examined by the Japanese authorities, and released on promising to take no further part in the war.² In such a case it would seem that a belligerent right takes precedence over extraterritorial rights—a view held, apparently, by the law officers of the French Republic.³

The episode had a somewhat discreditable sequel. Cameron, one of the Americans, broke his parole and entered the Chinese navy. When the Chinese fleet surrendered, the Japanese had agreed to abstain from action against Westerners in the Chinese service, but there can be little doubt that Cameron was outside the terms of that agreement on account of his former conduct. The question then arose whether he ought to be surrendered to the American Consul, but the Japanese, in accordance with their former policy, refused to recognise the efficacy of extraterritoriality where it conflicted with belligerent rights. Eventually he was retained as a prisoner until the end of the war and then released.⁴ There can be little question of the correctness of the Japanese view, or that Cameron was treated with extreme leniency.

The Russo-Japanese War was fought almost entirely upon Chinese soil, and both parties possessed extraterritorial rights in China. China, by a formal declaration, announced her neutrality

¹ Takahashi, *International Law during the Chino-Japanese War*, pp. 57-59.

² Each received 500 yen for expenses incurred.

³ Takahashi, *op. cit.* pp. 64-72.

⁴ *Ibid.* pp. 135-140.

during the struggle. What was her proper course of conduct in relation to the nationals of the two belligerents ?

With the general performance of neutral duties by China under these exceptional circumstances it is not necessary to deal. It must be remembered, however, that the war was localised to Manchuria, and that it was possible to maintain something approximating to complete neutrality in respect of the rest of China.

When armed forces of a belligerent enter neutral territory, it is necessary for the neutral to disarm them promptly, and they are admittedly within the full jurisdiction of the neutral. Assuming that they possess extraterritorial rights, the question is less simple. The Chinese attitude to this problem has been stated by Captain Tyler (Coast Inspector, and Neutrality Adviser to the Chinese Government during the war) as follows :

“ The Treaties in which the extraterritoriality of foreigners is provided for is in reference to conditions which are normal. With the existence of war on China's borders and with the high duties of neutrality devolving on her, conditions were no longer normal.

“ China, in respect to neutrality, was acting not only for herself, but Internationally. She became the constable of International Law. Having these high duties of sovereignty to perform, it was obviously requisite for her to have the corresponding high sovereign powers necessary to enable her to fulfil those duties. If interned men were free from her jurisdiction, how could she be responsible for them ? And responsible she had to be under International Law. She therefore considered that the prior obligation held and that consequently extraterritoriality could not be allowed to interfere with her neutral functions. In the later cases of internment there was a formal submission by the officers and men to ‘ the control which is customary in such cases.’

“ But, while China maintained this attitude, she was quite aware that her juridical methods were entirely unsuited to meet the emergency. She therefore in effect delegated to the local Russian officials the power of disciplinary control to be exercised under her superintendence, without, however, prejudice to her right to take any action in respect to jurisdiction which circumstances might render necessary.”¹

Accordingly, interned combatants who refused to give parole were detained as prisoners on a Chinese man-of-war, without reference to the Russian Consulate. This procedure was not resented by Russia, but in respect of crimes committed by Russian combatants in China, a different attitude was adopted. The

¹ Morse, *International Relations*, iii. p. 481.

only clear case on this point occurred on December 15, 1904, when a Russian sailor from the interned Russian cruiser, the *Askold*, murdered a Chinese on the Bund at Shanghai. The Russian authorities refused to allow the Chinese authorities to take any part in the trial, which was accordingly conducted without them. As the accused had never been in Chinese hands, it was impossible for them to do more than protest. China stipulated, however, that if any other case arose, and the prisoner was within the power of the Chinese, the trial should take place either at the Russian Consular Court, with a Chinese official present, or on board a Chinese man-of-war and conducted by the Russian Consul. No case arose, however, for the provision to operate.¹

Several cases arose in which the Russian crews of interned vessels refused to submit to any form of control by the Chinese. Thus, when the *Mandjour* and the *Askold* were interned at Shanghai in August 1904, some considerable time elapsed before the crews were disarmed.² A more serious affair, perhaps a consequence of the circumstance just mentioned, was that of the *Rechitelni* at Chefoo, on August 11-12, 1904. This vessel, a Russian warship, escaped from Port Arthur to Chefoo, where three Chinese warships were in port. It was required to surrender for internment. The commander submitted, and disarmament was begun, and practically completed, when two Japanese destroyers entered the port, and a Japanese officer demanded either the immediate surrender of the vessel or that it should go out and fight. The Russian captain replied that, having given his parole, he was under Chinese protection, and also unable to fight. Notwithstanding this, the Japanese seized the *Rechitelni*, and took her out to sea. Some Russians resisted, and there were a number of casualties.³

On November 16, 1904, the Russian destroyer *Rasteropny* entered Chefoo and surrendered for internment. Before she was taken over by the Chinese, she blew up and sank, and the crew landed, fully armed. The Japanese announced that they would land and take the Russian Consulate, unless the men surrendered. After urgent representations this was done, and they were confined on a Chinese warship.

¹ Morse, *International Relations*, iii. p. 481.

² *Ibid.* p. 48.

³ *Ibid.* pp. 484-485.

On January 2, 1905, four more Russian destroyers entered Chefoo, and announced their desire to surrender for internment. At the request of the Chinese authorities, the Commissioner of Customs, a British subject, disarmed them under considerable difficulties, the crews being taken ashore, and detained by the Chinese. Later still, surviving vessels from the Russian Baltic Fleet, after its defeat by the Japanese, took refuge in Chinese ports, and for a time passively resisted internment. Subsequently, however, they were disarmed and the crews detained.

These incidents well illustrate the difficulties which extraterritoriality provoked in the performance of neutral duty by China under unusual conditions. Each belligerent considered his nationals to be entirely beyond Chinese jurisdiction and control. It is submitted, however, that the Chinese attitude was entirely correct, and that China performed her duty as a neutral, in this respect, to the best of her ability.

Regarding the position of extraterritorially protected foreigners in theatres of war, during the Russian occupation of Manchuria in 1904 martial law was declared, and it was reported that foreign consuls had been informed that they were no longer to exercise jurisdiction over their nationals. This report was not confirmed, although it seems that extraterritorial rights were temporarily suspended as being in conflict with martial law.¹ On principle this seems correct, although the United States seems to have acted consistently on the assumption that martial law cannot restrict the exercise of extraterritorial jurisdiction.²

IX. DEFECTS OF THE EXISTING SYSTEM OF EXTRATERRITORIAL JURISDICTION IN CHINA

The existing system of extraterritorial jurisdiction in China is hardly an ideal system, even though a necessary one, and various defects of the system in operation have already been noticed. It remains now to consider a few of the more important defects specifically, and to examine what efforts have been made by the various treaty Powers to surmount them. Of the system generally, however, it is necessary to say that it is judged by its severest critics, the Chinese, rather by the deficiencies of the

¹ Hershey, *International Law during the Russo-Japanese War*, pp. 257-258.

² Moore, *Digest*, ii. pp. 641-644.

admittedly incomplete systems of the minor treaty Powers than by the comprehensive machinery which has been evolved by Great Britain, the United States, France, and Japan.

Various important defects of the existing extraterritorial system were advanced by the Chinese Delegation at the Peace Conference in 1919. Of these, the multiplicity of law courts and legal systems in China, together with the consequent variation in legal rights and causes of action, is unquestionably the most important. It has already been pointed out that even with respect to the extent of extraterritorial rights conferred by treaty, the systems of the various Powers exhibit considerable differences, owing to the fact that the "most favoured nation" clause has not been applied so as to make the privileges enjoyed equal in extent. Then, again, each nation applies its own laws in the adjudication of suits in which its nationals are defendants. Looking at it from the purely British standpoint, the following are the possible types of case which may arise :

1. Crime by a subject against a subject.
2. Crime by a subject against a Chinese.
3. Crime by a subject against a foreigner.
4. Crime by a Chinese against a subject.
5. Crime by a foreigner against a subject.
6. Action by a subject against a subject.
7. Action by a Chinese against a subject.
8. Action by a foreigner against a subject.
9. Action by a subject against a Chinese.
10. Action by a subject against a foreigner.

Of these, Nos. 1, 2, 3, 6, 7, and 8 are all tried in British courts in China. Nos. 4 and 9 are tried in Chinese courts, and in Nos. 5 and 10 the tribunal will vary with the nationality of the foreigner. If the foreigner possesses no extraterritorial rights (if *e.g.* he is a German) the case will be tried in Chinese courts. In the case of foreign courts, there will be little possibility of variety. The appropriate consular court will be the proper forum, but where a remedy is sought against a Chinese, the British subject may have to seek it either in a special "mixed court" (*e.g.* the Shanghai Provisional Court), in a Chinese modern court, in a transition court, in a special court, in a magistrate's court, or in a police tribunal. Exceptionally, it may be necessary for him to have

recourse to a military court or the administrative court at Peking. In actual fact, except for serious crimes, the foreigner will generally prefer arbitration. Again, some Powers (*e.g.* Great Britain and the United States) have the right to depute an officer to watch the proceedings where their nationals are suitors in Chinese courts. In theory the Chinese have a reciprocal right, admission of which has been generally avoided by the treaty Powers. The majority of the treaty Powers, however, do not possess this right.

In consequence of this great variety of *fora* every litigant in China (the Chinese are not by any means the only sufferers, as might appear from many of their memoranda on extraterritoriality) is faced with the problem that his remedies may vary with the nationality of the defendant. Suppose, for example, that a British subject makes identical contracts with another British subject, with a French subject, with an Italian, and with a Chinese. The contract may be valid and enforceable by English law, it may exist but be unenforceable by French law, it may be void by Italian law, and illegal by Chinese law. Again, assuming that in each case the contract is valid and enforceable, his damages may vary widely in the various courts, and there is obviously no possibility either of joinder of causes of action or of a representative action. He must prosecute each claim to judgment separately. Again, the punishment of joint criminals of different nationalities may be equally varied. These defects would have been avoided had the scheme advocated by *The Times* on the establishment of the British Supreme Court for China last century been adopted, and a unified system of extraterritorial courts been established; but nothing of the sort was attempted.

Closely linked with this defect is another. The courts of each nationality have power over their nationals only. Thus, where a foreigner sues a British subject in a British court, and brings forward foreign witnesses, the court has no jurisdiction whatever over the plaintiff or the witnesses. On this point the Report of the Extraterritoriality Commission observes :

“ Thus, if such a person commits perjury or is guilty of contempt of court, he is immune from the usual process of law administered by the court in such cases, although the court is not powerless, as it may (1) refuse to continue hearing the case ; (2) strike the name of the offender, if he should be a lawyer, from the roll of attorneys of the court ; and (3) refer the matter to the court having jurisdiction over

the offending alien, which in some instances has power to punish him. Again, if the defendant desires to bring a counter-claim against the alien plaintiff, he cannot do so in the same court,¹ unless (1) the counter-claim is in fact a 'set-off,' or (2) the plaintiff submits to the jurisdiction of the court to the extent of depositing security for the satisfaction of the judgment if it should go against him. However, in a case where a counter-claim is raised against an alien plaintiff, the court may, in the interests of justice, stay execution of judgment, or even stay the proceedings, until the counter-claim has been heard in the competent court. Disputes as to the ownership of property seized in execution, which in other countries would be brought before the court in the form of an interpleader issue, are complicated in China by the existence of other courts claiming jurisdiction."²

With regard to this particular defect, however, it is necessary to add that the more important treaty Powers have made provision to minimise it. Thus, the British Order in Council permits British courts to punish for perjury committed in a foreign or Chinese court in China,³ and for contempts of court committed by British subjects in those courts.⁴ Further, where a British subject is required in any Chinese court, or in a foreign court in China, to give evidence, or for any other purpose connected with the administration of justice, a British court may, if it thinks fit, require the British subject to attend.⁵ Moreover, where a British subject seeks a remedy in a Chinese or foreign court, and engages in writing to abide by the decision of that court, or to pay any fees or expenses ordered by that court, British courts may require him to carry out his undertaking.⁶ Again,

"The Court may, upon the application of any person who has obtained a judgment or order for the recovery or payment of money in a foreign court in China against a person subject to the jurisdiction of that Court, and upon a certificate by a proper officer of the foreign Court that such judgment has been recovered or order made (specifying the amount), and that it is still unsatisfied, and that a British subject is alleged to be indebted to such debtor and is within the jurisdiction, order that all debts owing or accruing from such British subject (herein after called the garnishee) to such debtor shall be attached to answer the judgment or order; and by the same or a subsequent order may order the garnishee to pay his debt or so much as may be sufficient to satisfy the judgment or order of the foreign Court.

"An order shall not be made under this Article unless the Court

¹ See, on this point, the important Privy Council judgment in *Imperial Japanese Government v. P. & O. Steam Navigation Co.*, [1895] A.C. 644.

² *Report*, pp. 21-22.

³ Section 39 (3).

⁴ Section 39 (4).

⁵ Section 206.

⁶ Section 207.

is satisfied that the foreign Court is authorized to exercise similar powers in the case of a debt due from a person subject to its jurisdiction to a British subject against whom a judgment has been obtained in a Court established under this Order.”¹

Conversely, a British court may withhold a remedy from a foreign litigant until the requirements of justice are satisfied. Thus section 205 directs that where a foreigner desires to institute an action in a British court against a British subject, or where a British subject desires to institute an action in a British court against a foreigner, the foreigner may be first required to file the consent in writing of his own nation to his submitting to the jurisdiction of the British court, and may also be required to give security by deposit or otherwise, to pay fees, damages, costs, and expenses, and to abide by the decision of the court. Again, where a foreigner obtains a judgment or order in a British court against a British subject, and that British subject is suing the same foreigner in the foreign court, the British court may stay the enforcement of the order, pending the other suit, and may set-off the two judgments. Further, where a foreign plaintiff obtains an order in a British court against two or more British subjects jointly, and one of them is suing the foreigner in the foreign court, the British court may again stay the enforcement of the order pending a decision in the other action, and may set-off any amount ordered to be paid by one party in one action against any amount ordered to be paid by the other party in the other action, without prejudice to the right of the British subject to require contribution from his co-defendants. Lastly, where a foreigner is co-plaintiff with a British subject in a British court, the British co-plaintiff may be made responsible for all fees and costs.

Various other treaty Powers make similar provisions, and Professor Willoughby records that an American lawyer was recently suspended from practice by the United States Court for China because of unprofessional conduct in a case before a British court.² All things considered, therefore, it is probable that this defect is rather more apparent than real.

A further difficulty connected with the present extraterritorial system is the inaccessibility of some extraterritorial courts, and the consequent difficulty of procuring evidence. Except in

¹ Section 208.

² *Foreign Rights and Interests in China*, ii. p. 671, note.

the case of Great Britain and the United States, subjects of treaty Powers committing serious crimes can only be tried outside China, and in some cases they are even sent to Europe. This consideration is more particularly important in the matter of appeals, both civil and criminal. Again, even where foreigners are tried in China, the place of trial may be a very great distance from the place where the offence was committed, if it was committed in the interior. The result is considerable expense and considerable delay in the procuring of evidence, "but the fact that most foreigners in China live in the larger treaty ports¹ where foreign courts exist, and the fact that some of the extraterritorial systems permit their courts to go on circuit to try cases in remote districts, eliminate to a large extent these inconveniences."²

An additional defect, of which much is sometimes made for purposes of propaganda, is connected with the exercise of the consular function itself. In the first place, it is urged that the consular and judicial functions clash, and secondly, that the consul is only rarely a trained lawyer. On the first point, Sir Robert Hart's old dictum that "a consul is not naturally more unreasonable or unjust than other men" might profitably be remembered. Moreover, an investigation into the correspondence relating to China last century will reveal the fact that British consuls were quite as ready to support a Chinese in the prosecution of a lawful claim against a British subject as to support British claims against Chinese. Indeed, in the case of the Shanghai Customs during the Taiping Rebellion, both British and American consuls attempted to enforce Chinese claims to customs dues when the Chinese authorities themselves had abandoned the attempt. Yet again, a number of treaty Powers have established special courts, or appointed trained judges to avoid the alleged difficulty. On the other hand, it must be remembered that the system as a whole is not infrequently judged according to the practice of its least reputable exponent, and that the records of minor treaty Powers could furnish instances of abuse of consular function chiefly arising from the circumstance that the consul of a minor Power is only rarely a professional consul; when he is actively engaged in the prosecution of commercial activities, his threefold function becomes a serious hindrance to the proper performance of his judicial duties.

¹ Their right of residence is restricted by treaty.

² *Report*, p. 22.

The Report of the Extraterritoriality Commission also notices that

“ the Courts of the foreign Powers in China apply to their nationals their own territorial laws, with or without modifications. The power to make such modifications, without specific legislative authority in each case, is of course limited, and does not as a rule extend to the enforcement of Chinese subsidiary legislation (ordinances, by-laws, rules, regulations, etc.), such as regulations relating to traffic, regulations relating to taxation, and regulations relating to the press. From the immunity of foreigners in this respect an anomalous situation arises, which has been a source of friction between them and the Chinese authorities.”¹

It should be noticed that these observations do not fully apply to Great Britain, for the Order in Council expressly authorises the application of any reasonable local custom or regulation ; but the immunity from taxation has been general. In regard to this, it should be remembered that the Commission, in their recommendations, declared that “ pending the abolition of extraterritoriality, the nationals of the Powers concerned should be required to pay such taxes as may be prescribed in laws and regulations duly promulgated by the competent authorities of the Chinese Government and recognised by the Powers concerned as applicable to their nationals.”² The writer ventures to suggest that an attempt to put this recommendation into practice would be productive of a good deal of litigation, since the extraterritorial courts would be required to interpret that insoluble conundrum which is contained within that specious phrase “ duly promulgated by the competent authorities of the Chinese Government.”

Since China follows, as a test of nationality, the *jus sanguinis*, and some treaty Powers recognise the *jus soli*, it is obvious that difficulties may arise here, especially as China does not recognise the validity of naturalisation of a person of Chinese origin in a foreign country.³ A more important question, however, is that connected with the irregular protection of Chinese by extraterritorial Powers. It has already been noticed in earlier chapters that in the early treaty days, the same rights (including extraterritoriality) were implicitly conceded to all foreigners, whether they possessed a treaty or not. On the other hand, the position of subjects of treaty Powers of Chinese race only seems to have

¹ *Report*, pp. 22-23.

² *Ibid.* p. 96.

³ *Ibid.* p. 23.

been considered after the treaties had been signed. As far as the first point is concerned, the right of extraterritoriality was gradually restricted to those Powers which had treaties guaranteeing it, and their *protégés*. Even the *protégé* system has now been denounced by China, and has fallen into general disuse. On the other hand, the position of Chinese subjects of treaty Powers soon created a number of peculiar problems, for they could go as they pleased in China until they came into conflict with Chinese laws, and then they could invoke the right of extraterritoriality. It has already been noticed how early British officials in China attempted to solve the problem by requiring protected Chinese to exhibit some marks of difference from Chinese subjects—but these were unsuccessful. A more practical remedy was found in registration. Unfortunately, some treaty Powers still do not require compulsory registration of their subjects in China,¹ and moreover “it happens that some extraterritorial Powers too readily extend protection to Chinese in China by allowing Chinese citizens as well as their firms and property to be registered by their consulates. By so doing they remove those persons, their property and business interests from the jurisdiction of Chinese laws and Chinese courts. There is no justification, however, for such protection, and a number of Powers, realising this, have taken steps to control and remedy this situation.”² The practice of protecting other than *bona fide* subjects of treaty Powers, of Chinese race, might well be abandoned altogether.

The Report also notices that the absence of extradition arrangements between China and some of the Powers and between some of the Powers themselves frequently makes it impossible to bring escaped criminals to justice. It is impossible to blame extraterritoriality for the whole of this, but the existence of the right certainly increases the difficulties encountered.³ Akin to this difficulty is that resulting from the inviolability (guaranteed by treaties) of foreign premises in China from search or entry by Chinese officials, with the consequence that Chinese criminals taking refuge there cannot be arrested without the consent of the consular authorities. In some cases this is only given when a *prima facie* case has been made out. Anyone familiar with conditions in China and the methods of Chinese local authorities will readily appreciate how necessary this immunity from search

¹ *Report*, p. 23.

² *Ibid.*

³ *Ibid.* pp. 23–24.

and entry is, but it has not been free from abuse, especially when the premises are situated in the interior, far from a consulate ; but, as the Report of the Extraterritoriality Commission indicates, the defect is reciprocal, for " a similar situation arises when a foreign court has occasion to arrest or serve a process upon a person under its jurisdiction who resides or has taken refuge on premises belonging to Chinese or persons of another extraterritorial nationality." ¹

From the European standpoint, the most serious defect is that the right of extraterritoriality is coupled with a limitation of the places open to foreigners for residence and trade. Missionaries alone are unrestricted in their activities in China. The merchants are confined to the " treaty ports," and even here they are usually confined to special areas in those ports (concerning the extent of which there have been frequent disputes).² This attitude on the part of the Chinese is fully comprehensible, and indeed entirely justified. Were foreigners to be allowed to move and trade freely in China the difficulties attending the exercise of the right of extraterritoriality would be very greatly increased. It should also be remembered that the situation was precisely similar in Japan before the abolition of extraterritoriality there. On the other hand, it is at present impossible to renounce that special protection of foreigners which is implied by the term extraterritoriality.

Finally, it must be noticed that the persistence of the right is resented in China as an infringement of China's sovereignty. It is, of course, guaranteed by treaties, properly entered into, and a State frequently resents treaty arrangements which it is powerless to avoid. The present work has also demonstrated that extraterritoriality is a necessary and customary condition of intercourse with Eastern States possessing a type of civilisation which differs fundamentally from that of the West ; whilst the succeeding chapter will endeavour to place the doctrine of sovereignty in relation to extraterritoriality in true perspective. Nevertheless, the fact remains that the right at present is a material limitation of China's sovereign rights, and as such is a continuing source of friction between China and the Western Powers. Under these circumstances it is appropriate to recall that practice, more specifically exemplified by the case of Japan, warrants the

¹ *Report*, p. 24.

² *Ibid.*

statement that the right is voluntarily relinquished by the privileged States, as soon as judicial conditions in the State subject to the servitude warrant it. This has indeed been expressly promised by numerous treaty Powers (including Great Britain, the United States, and Japan) as regards China.

With the numerous schemes which have been advanced at various times for the progressive relinquishment of the right in China, it is not proposed to deal. It will be sufficient to state that, in the present writer's view, modern Chinese courts might well be established immediately in the treaty ports, presided over by Chinese and foreign (non-consular) judges jointly, for the purpose of administering the new Chinese codes in all mixed suits affecting Chinese and foreigners, irrespective of the defendant's nationality. Upon the success of this experiment would depend the desirability of relinquishing jurisdiction where foreigners alone (including suits in which foreigners of different nationalities are concerned) were involved. The present writer also believes that it is the limitation of Chinese sovereignty involved in the right which is chiefly involved, and that the suggestion just advanced (assuming that the foreign co-judges were appointed by the Chinese Government on the advice of the foreign ministers and were integral units of the Chinese judicial administration) would go far towards restoring China's judicial integrity, without at the same time imperilling foreign interests by exposing them to the anomalies of judicial administration, which admittedly exist in China at the present time.

CHAPTER XI

EXTRATERRITORIALITY IN GENERAL HISTORICALLY CONSIDERED ¹

AUTHORITIES

Shih Shun Lin, *Extraterritoriality*. Coleman Phillipson, *International Law and Custom of Ancient Greece and Rome*. Sir Travers Twiss, *Law of Nations*. Muirhead, *Historical Introduction to the Private Law of Rome*. Stubbs, *Select Charters*. Scofield, *Edward IV*, 2 vols. Bewes, *Romance of the Law Merchant*. Rymer, *Foedera*. Hall, *Foreign Jurisdiction of the British Crown*. Tarring, *British Consular Jurisdiction in the East*. Hakluyt, *Principal Navigations of the English Nation*, Vol. III. Hinckley, *American Consular Jurisdiction in the Orient*. *American Journal of International Law*, Vol. XVI.

I. THE ANCIENT WORLD

THE conception of sovereignty as absolute over all persons within defined territory, upon which the science of international law is based, is essentially a modern one. In theory it is scarcely older than the Renaissance, and in practice, even in Europe, it was not general before the French Revolution, and the consequent growth of Nationalism as the leading factor in determining the composition of States. Even to-day, however, among States fully subject to international law, there are limitations upon this theoretical absolutism. An alien within the territory of a State never fully loses the right to protection by his own State, unless the latter voluntarily renounces the right. So, if he encounters discrimination or injustice, his State may intervene, either diplomatically or by the exercise of forcible measures, to secure redress. From this it follows that even to-day the status of the alien is slightly different from the status of subjects within a given

¹ The history of extraterritoriality has recently been made the subject of an excellent study by Dr. Shih Shun Lin (*Extraterritoriality: its Rise and Decline*. Columbia University Press, 1925). Frequent references to this work appear in the present chapter.

territory, for the alien has a claim to some exterior agency for redress in certain circumstances, whilst the subject has none. In ancient times the differences in status between subject and alien were far more marked than they are to-day. This was due to the fact that many communities regarded their law as a privilege to which the alien had no claim. To a certain extent this is due to the early association of law with religion, but the exclusion persisted even after the secularisation of law.

An excellent example of this exclusion of aliens from the benefits of the national law may be found in the position of the Phoenician merchants in the cities of ancient Greece. Greek law, like the early Roman law, was derived from Aryan customs of considerable antiquity, and was based eventually upon the conception of the family. Its mercantile provisions were few, and suitable only for the wants of an agricultural community. The spread of commerce and the influx of foreign merchants into the Greek seaports therefore created a difficult situation. The foreign merchants, being neither citizens nor members of any family, obviously could not be subject to Greek law; even had this been possible, Greek law would have been inadequate to comprehend the complicated mercantile transactions which the Phoenicians had evolved. What, for example, had Aryan custom to say concerning a respondentia bond, concerning banking, or the liability of a common carrier? Even the Phoenicians had been unable to solve these legal problems for themselves, but had borrowed their legal institutions piecemeal from the remarkably complete system which the Babylonians had built upon the firm foundation of Hammurabi's Code. Accordingly, the Greeks permitted the Phoenicians to establish *πρόξενοι* at the ports where they congregated. These officials had functions corresponding almost exactly with those of European consuls in China at the present day. It was their duty to supply information to the Government that appointed them, and advice and assistance to their fellow-countrymen abroad. They might also be intermediaries between their country and the city in which they resided. Lastly, they watched over the interests of their countrymen in litigation and settled their disputes, where both parties were of the same nationality.¹ For disputes between Greeks and

¹ Coleman Phillipson, *International Law and Custom of Ancient Greece and Rome*, i. pp. 147-150.

foreigners, however, special officials known as ξενοδίκαι were appointed. "Sometimes such magistrates were appointed on the initiative of the particular national government in question, sometimes provisions were arranged to that effect by means of special conventions between States." In some cases officials delivered binding judgments, in others they merely investigated and reported to the ordinary magistrates, who gave decisions.¹ It should be observed that familiarity with foreign mercantile customs eventually caused the Greeks to incorporate many of them into Greek law. In this way a good deal of Babylonian law was imported into Greece. When this stage had been reached, both subject and foreigner had a common mercantile law, but the family and criminal laws would still exhibit considerable differences, rendering a special procedure necessary.

At a somewhat earlier period, the Egyptians, no doubt actuated by similar motives, allowed foreigners within their territory to remain subject to their own laws. Thus, in the twelfth century B.C. Tyrian merchants in Egypt were allowed to establish settlements where they remained subject to their own laws, and worshipped according to their own religion.² Later, the same privileges were extended to the Greeks.³

Several centuries later the Romans had to face a similar problem to that of the Greeks. Here, again, the local law was restricted to full Roman citizens, and was also inadequate for extension to mercantile transactions of any degree of complexity. The Romans solved the problem by appointing the *praetor peregrinus* in 242 B.C. and allowing him to dispense justice in suits in which foreigners were involved. Out of this grew the *jus gentium*, which is termed by both Gaius and Justinian "the law in use among all nations." This has been regarded by some writers as a species of empiric law, selected by the *praetor* from a variety of legal institutions followed by foreigners in Rome. Thus, Muirhead remarks: "To say that it was *de facto* in observance everywhere is inaccurate; on the contrary, it was Roman law, built up by Roman jurists, though called into existence through the necessities of intercourse with and among non-Romans."⁴ The second part of this statement does not

¹ Coleman Phillipson, *op. cit.* i. p. 192.

² Sir Travers Twiss, *Law of Nations*, i. p. 444.

³ Coleman Phillipson, *op. cit.* i. p. 193.

⁴ *Historical Introduction to the Private Law of Rome*, p. 216.

necessarily conflict with the hypothesis advanced in the first. At the time when the *jus gentium* was being evolved, the commerce of the Mediterranean was almost entirely in the hands of Greeks and races of Phoenician origin (*e.g.* Carthaginians and inhabitants of the Phoenician Colonies). All of these foreigners had adopted a common mercantile law derived ultimately from Babylon, and this was the law which eventually formed the basis of the *jus gentium*. In A.D. 212, however, Caracalla conferred citizenship upon all subjects of the Roman Empire, and the status of foreigners therefore became of little importance; but even within the Empire, some communities were still allowed to be governed by their own laws, in some cases by magistrates selected by themselves.¹

On the downfall of the Roman Empire, the inapplicability of the laws of one people to members of an alien community was again plainly demonstrated. Thus, the *Edictum Theodorici* (A.D. 500) was intended by Theodoric to extend to all his subjects, Roman and Gothic; but the plan failed, and in some matters the Goths continued to be governed by their ancient customs.² Again, in promulgating a code for his Burgundian subjects in A.D. 501, King Gundobald promised that a further code should be prepared for his Roman subjects, and this was accordingly done, the product being known as the *lex Romana Burgundionum*.³ The laws of the Visigoths of A.D. 506 contained the provision that "if merchants of oversea ports have any action among themselves, no judge of our land ought to judge it; but they must answer according to their own laws and before their own judges." Evidence also exists showing that under the Lombards, Lombards and Romans were each subject to their own laws, whilst under the Franks, each separate community was governed by its own customs, and Bishop Agobard observes: "It often happens that five men, each under a different law, would be found walking or sitting together."⁴

II. THE MEDIAEVAL SYSTEM

The system of separate laws for different communities of individuals reached its highest pitch of development during the

¹ See Shih, *Extraterritoriality*, p. 27.

³ *Ibid.* p. 361.

² Muirhead, *op. cit.* p. 360.

⁴ Shih, *op. cit.* pp. 27-29.

Middle Ages. The law according to which a man might be tried, as well as the forum in which the trial might take place, were determined entirely by his status. Thus, in every part of Christendom clerics were withdrawn completely from secular jurisdiction. Even in England the Constitutions of Clarendon (1164) established the principle that where clerks were accused of crime, they were to be summoned first before the King's Justice, who determined whether the case ought to be tried in a secular or a spiritual court. If the fact of clerkship was established, the case was tried in a spiritual court, a lay officer being appointed by the King's Justices to watch the proceedings, and if the accused were found guilty he was not to be protected by the Church. Chapter VII of the Constitutions separates the lay and ecclesiastical jurisdictions. The distinction between the two had existed since the time of William the Conqueror.¹

Again, each feudal lord held a court for his under-tenants. In England the manorial and other feudal courts rapidly declined in importance, but on the Continent they flourished, proving an insurmountable barrier to the centralisation of justice until the eighteenth century. Lastly, the merchants were subject to the Law Merchant administered in mercantile courts. It is this last circumstance that is primarily important in discussing consular jurisdiction during the Middle Ages.

In mediaeval times merchants travelling abroad found it necessary to organise themselves into communities, living in quarters specially set aside for their use, and easily defended in times of emergency. Of these mercantile organisations during the Middle Ages, the Hanseatic League is by far the most important; and it was the consistent policy of this League to withdraw its members from local jurisdiction.² Thus, in the treaty signed between Edward IV of England and the Hanseatic League in 1474, Article V provides that Hanseatic merchants are not to be subject to the jurisdiction of the Admiral of England, but, when controversies arise involving Hanseatic merchants, the king will appoint two or more judges to hear and determine them.³ Other foreigners, however, enjoyed similar privileges in England and in other European States at the same period.⁴

Out of the privileges accorded to foreign merchants during

¹ Stubbs, *Select Charters*, p. 85.

³ Scofield, *Edward IV*, ii. p. 77.

² Shih, *op. cit.* pp. 29-30, 34-36.

⁴ Shih, *op. cit.* pp. 30-31.

this period eventually grew the function of the modern consul. Thus, in 1279, Pedro III of Aragon allowed merchants of Barcelona to choose two judges to preside over disputes arising between the merchants. Following this, other Spanish towns enjoyed the right.¹ In Italy consular jurisdiction seems to have arisen even earlier. In some cases the merchants of one country abroad chose a captain or rector, with subordinate consuls, to settle disputes arising among them. The consul was not necessarily a fellow-countryman.² In 1485 Richard III appointed Laurentio Strozzi, a Florentine, to be English Consul in Pisa. The appointment is particularly interesting, as it plainly shows how common these appointments were in the Middle Ages. It runs :

“Whereas certain merchants and others from England intend to frequent foreign parts, and chiefly Italy, with their ships and merchandise, and we being desirous to consult their peace and advantage as much as possible, and observing from the practice of other nations the necessity of their having a peculiar magistrate amongst them for the determining of all disputes etc. between merchants and others, natives of England. Moreover, we understanding that the City of Pisa is a very proper place for the residence of our merchants ; and being assured of the fidelity and probity of Laurentio Strozzi, a merchant of Florence, have and do, at the request of our merchants already frequenting Pisa, and such as are to resort thither, appoint him to be consul and President of all our merchants at Pisa and the parts adjacent, allowing him for his trouble herein the fourth part of one per cent. on all goods either imported to or exported from thence.”³

On this appointment Hall observes :

“The letters patent given to Lorenzo Strozzi by Richard III in 1485 seem to rest rather upon usage of nations than upon any antecedent grant or privilege from Pisa, where the consulate was established ; they moreover contain a direct creation of a royal magistracy, and put under it not merchants only, but all subjects of the Crown in those parts.”⁴

It must be noticed, however, that during the Middle Ages there were several types of consul. Some travelled from place to place, and at the great fairs, where the merchants assembled,

¹ Bewes, *Romance of the Law Merchant*, p. 82.

² *Ibid.* p. 33.

³ Rymer, *Foedera*, xii. p. 261. Christopher Spence was appointed to the same office in the following year (Anderson, *Origin of Commerce*, i. pp. 301-303).

⁴ *Foreign Jurisdiction of the British Crown*, 1894, pp. 132-133.

represented them in disputes arising out of the business of the fair, and settled disputes between compatriots.¹ Then there were permanent consulates (*consulados del mar*) established by the merchants of one city in other cities of the same country. In this case the merchants of the other city were closely organised into a guild, which appointed consuls, and drew up rules governing mercantile transactions which the consuls enforced in a commercial court.² Akin to these were the permanent consulates in foreign countries, exercising jurisdiction over the merchants of their own nationality (and over other fellow-countrymen as well) who lived in a circumscribed area, which may be termed a "factory." The Steelyard in London, occupied by the Hanse merchants during the Middle Ages, is a good example of this, and the same system was later adopted by European merchants in the Orient. Thus, the East India Company established factories in India, the East Indies, Siam, China, and Japan similar to those common in Europe during the Middle Ages. The foreign merchants in Europe, however, were not regarded as withdrawn from the local jurisdiction for all purposes. Thus, the sixth article of the *Carta Mercatoria*, granted by Edward I in 1303, concedes the right to all foreign merchants in all cases, excepting those where they were accused of crimes entailing the death penalty (*i.e.* felonies), to claim a jury of which half should be composed of foreigners of the merchants' nationality. This right persisted until 1870.³ Again, an episode which occurred in 1467 proved that even the London Steelyard was not completely extraterritorialised from the king's jurisdiction. In that year fishermen from Lynton and Bristol landed in Iceland, and robbed and pillaged there. The King of Denmark complained to Edward IV, but obtained no redress. He therefore seized four English ships on their way to Prussia. Edward IV was under the impression that the seizure had been made at the instigation of the Hanseatic League by some ships of Dantzic, in the Danish service.

"As a result, on 29th July the mayor and aldermen of London, by command of Edward and his council, went to the Steelyard, sealed up the doors of the warehouses, and sent the Hansards living there to the Ludgate Counter, while orders went out for the arrest of all

¹ Bewes, *op. cit.* pp. 80-81, 85.

² *Ibid.* pp. 81-82, 85.

³ Abolished by the Naturalisation Act (33 & 34 Vict. c. 14, s. 5).

other Hanseatic merchants in all parts of the kingdom. On their arrival at the Ludgate Counter, the prisoners were informed, to their intense dismay, that unless they could prove their innocence by Michaelmas, they would have to pay a fine of twenty thousand pounds, the estimated value of the ships.¹ In the meantime, too, they had to loan the king a thousand pounds on the understanding that this amount would be deducted from their fine, should it turn out that they had to pay one."²

Subsequently the case was brought before the Star Chamber, which decreed that the English merchants who had suffered loss should receive compensation out of the goods of the Hansards, those of the Cologne merchants excepted. On their refusal they were taken back to prison. A month later the mayor and sheriffs of London were instructed to arrest all the merchants of the German House not already in custody, and to take possession of their goods. It was intimated that these would be confiscated outright unless the fine was paid by the end of January. Eventually a compromise was arranged, as a result of which the merchants paid four thousand nobles, the remainder of the fine being remitted. The merchants were then freed.³ The important feature of this case, however, was that although the Duke of Burgundy and other rulers had interested themselves in the plight of the merchants, the invasion of the Steelyard does not seem to have been regarded as a violation of the rights of foreign merchants. When a new treaty was concluded with the Hanseatic League in 1474, in addition to the exemption of mercantile disputes from the jurisdiction of the Admiral, the treaty provided that the Hansards were to have exclusive jurisdiction within the Steelyard, and moreover, within the same limits were to be entirely free from any form of judicial process. These privileges were exceptional, and Edward IV promised not to concede them to other foreigners.

Finally, where the local sovereign did not concede the right to the merchants to elect their own consuls, special judges for mercantile cases were appointed by the lord or municipality having the right to the court.⁴

Into this system the Renaissance theories of absolute sovereignty, made possible by the final shattering of the con-

¹ This seems a clear case of the application of the doctrine of responsibility.

² Scofield, *op. cit.* i. p. 466.

³ *Ibid.* pp. 467-468.

⁴ Bewes, *op. cit.* p. 85.

ception of a united Christendom under Pope and Emperor, intruded as a disturbing factor. Political events—the rise of the new national monarchies in Western Europe and the establishment of national churches—accentuated the changed order of things. Finally, the steady growth of modern international law stressed the mutual independence and equality before the law of States, and defined the right of jurisdiction for the first time in terms of State sovereignty. Accordingly, Tarring observes :

“ By the middle of the seventeenth century, with the adoption of the system of permanent diplomatic representatives among European nations, and the progress of the notion of State-sovereignty within State territory, the exercise of coercive judicial functions by foreign Consuls was found to be incongruous and inconsistent with national rights ; while the growth and fair enforcement of municipal law, as well as the general softening of international manners, rendered it less necessary. In consequence, throughout Christian Europe this jurisdiction was surrendered into the hands of the territorial authorities ; and the mediaeval jurisdiction of the Consul shrank into a superintendence over the shipping and commercial interests of the nation he represented, and a loosely defined authority or general consultative position towards his fellow-countrymen within his district.” ¹

In the East it was far otherwise, and the European Consul there was steadily acquiring jurisdiction which had been lost in European countries. Even in Europe, however, there were a number of interesting survivals of the earlier system. The Emperor of Russia, in 1555, concedes to English merchants the right of settling their own disputes.² Dr. Shih has collected some even more remarkable examples, including a treaty between England and France in 1606,³ another between France and Russia of 1787,⁴ another between France and the United States of 1788,⁵ the “ assiento ” treaties between Portugal (1696), France (1701), England (1713), and Spain,⁶ and finally a treaty between Italy and Ethiopia (1889).⁷ In all these treaties consular jurisdiction was reciprocal.

¹ *British Consular Jurisdiction in the East*, p. 4.

² Hakluyt, *Principal Navigations of the English Nation*, iii. p. 99.

³ *Op. cit.* p. 35.

⁴ *Ibid.* p. 41.

⁵ *Ibid.*

⁶ *Ibid.* p. 43.

⁷ *Ibid.*

III. THE CAPITULATIONS

In his celebrated letter to Kiating, claiming extraterritoriality as of right for Americans in China, Mr. Caleb Cushing points out that one principle has always governed the intercourse of Christian with Mahommedan subjects, viz. that subjects of Christian countries are not subject to Mahommedan jurisdiction. This principle has a long and interesting history. The Testament of Mahommed of 625 is reputed to have conceded various privileges to Christians, one of which was the protection of Christian judges. Similarly, the capitulation of Omar to Syrian Christians in 636 conferred a special status on Christian subjects. Both these documents, however, are apocryphal. Coincidentally, Arab merchants in China in the ninth and tenth centuries were permitted to retain their own laws. At this period Mahommedans seem to have accepted the personal theory of law as completely as Christians of Western Europe.

In the commercial expansion in the Mediterranean during and after the Crusades, Italian merchants obtained a number of privileges, including the right of consular jurisdiction, from the Mahommedan States of the Levant,¹ whilst the Assizes of Jerusalem established a Commercial Court, comprising a bailiff and six jurors, two of whom were Christians and four Syrians.² In the twelfth and thirteenth centuries the Italian cities enjoyed extraterritorial rights in Egypt and the Mahommedan States of Northern Africa.³

When the Turks conquered the Christian communities of Asia Minor, and later, after the fall of Constantinople, advanced their empire into Europe, they allowed these communities to retain their own laws, deeming them unworthy to be regulated by Mahommedan law. Thus the Greeks and Armenians each chose magistrates, who decided their disputes, and even the Jews had similar privileges. It followed, therefore, that when European merchants entered the Ottoman dominions to trade, they should be permitted to decide their own disputes according to their own law. Hence arise the modern Capitulations—freely conceded by an empire which, for several centuries after their establishment,

¹ Shih, *op. cit.* pp. 53-54.

² *Ibid.*

³ *Ibid.* pp. 58-59. See also Bewes, *op. cit.* pp. 86-87.

was considered capable of overrunning the whole of Europe, and whose armies, upon occasion, penetrated as far as the gates of Vienna. Both Christian and Muslim regarded the system as inevitable, on account of the wide differences in civilisation and religion. Further, what the Turks freely conceded, believing it to be no derogation from their sovereignty, Christians later also were prepared to grant to Mahommedans within their territories. In a treaty of 1230 between the Emperor Frederick II and Abbuissac, Prince of the Saracens, it is provided that a Mahommedan consul shall exercise jurisdiction over Mahommedan merchants in Corsica, in the Emperor's name.¹ In a treaty of 1631 between Louis XIII of France and Mulei Elqualid, Emperor of Morocco, extraterritorial rights are freely conceded by each sovereign to the other.² In 1721 Great Britain conceded extraterritorial jurisdiction to Moors in England. This right was renewed in 1729, 1751, 1760, 1791, and 1801.³ In 1809 Great Britain conceded extraterritorial rights to Turkish subjects in Malta.⁴ By a treaty of 1740 the Turks obtained extraterritorial rights in Sicily ;⁵ in 1825 Moors obtained extraterritorial rights in Sardinia ;⁶ a treaty of 1782 (confirmed 1840) conferred extraterritorial rights on Turks in Spain, and in 1784 subjects of Tripoli in Spain gained similar privileges.⁷ Lastly, by the treaty of 1889 between Italy and Ethiopia, already noted, Ethiopians in Italy gained extraterritorial rights. Under these circumstances it is certainly clear that extraterritoriality is no anomaly, even in countries fully subject to international law, and that even in these States the notion of absolute jurisdiction within defined territory only finds full practical realisation in the twentieth century.

The first modern Capitulations were conceded by the Turks to France in 1535. Before that, however, jurisdictional rights had been granted by treaty to Italian cities and the French merchants in particular localities in the Ottoman dominions.⁸ For over a century other foreigners trading in the Levant were compelled to do so under the French flag. Rights of jurisdiction were conceded to practically all European States, some American States, and Persia. Besides the Ottoman empire, the

¹ Shih, *op. cit.* p. 34.

² *Ibid.* p. 39.

³ *Ibid.* p. 40.

⁴ Hinckley, *American Consular Jurisdiction in the Orient*, p. 18.

⁵ Shih, p. 40.

⁶ *Ibid.* p. 41.

⁷ Hinckley, p. 18.

⁸ Shih, *op. cit.* pp. 65-66.

rights were exercised in Algiers, Morocco, Tripoli, Tunis, Persia, Muscat, Zanzibar, Senna, Egypt, Congo, Ethiopia, and Madagascar.¹ In 1917 Turkey denounced the Capitulations (a point which will be considered later), and in many of the other countries extraterritorial rights have now been relinquished, or else their operation has been greatly curtailed, owing to the fact that these territories have passed under the domination of a European Power.

IV. EXTRATERRITORIALITY IN THE FAR EAST

Since European merchants, in the prosecution of their commerce in the Near East, were already accustomed to the retention of their own laws, administered by their consuls, in their dealings with the countries of the Near East, it is not surprising that they attempted to follow the same course when, a century or two later, they penetrated into the Far East. The policy of the English East India Company in this connection has already been delineated. The Dutch East India Company followed a similar system wherever possible, and thus a treaty between Siam and the Company of 1664 provided for the retention of jurisdiction by the Chief of the Company's factory there, whilst in Japan, at the beginning of the seventeenth century, Portuguese, Spanish, English, and Dutch traders enjoyed the benefit of their own law.²

As far as Siam is concerned, the French also in the seventeenth century negotiated treaties conferring extraterritorial rights.³ Before the beginning of the nineteenth century, however, these rights enjoyed by foreigners seem to have fallen into desuetude, and the English treaty of 1826, together with the American treaty of 1833, subject the nationals of the two countries to Siamese jurisdiction.⁴ In 1855 a new treaty was concluded between Great Britain and Siam, conferring full extraterritorial rights on British subjects there. Other Powers quickly followed suit, the relevant dates being as follows: The United States (1856); France (1856); Denmark (1858); Portugal (1859); the Netherlands (1860); Prussia (1862); Sweden and Norway

¹ Shih, *op. cit.* pp. 67-70.

² *Ibid.* p. 77.

³ *Ibid.* p. 78.

⁴ *Ibid.* p. 79. See also James, "Jurisdiction over Foreigners in Siam," *A.J.I.L.* xvi. p. 588.

(1868); Belgium (1868); Italy (1868); Austria-Hungary (1869); Spain (1870); Japan (1898).¹

In Japan the following Powers obtained grants of extra-territorial rights by treaty: Russia (1855); the United States (1857); Great Britain (1858); France (1858); Portugal (1860); Prussia (1861); the Netherlands (1855); Switzerland (1864); Belgium (1866); Italy (1866); Denmark (1867); Sweden and Norway (1868); Spain (1868); Austria-Hungary (1869); Hawaii (1871); China (1871); Peru (1873).²

Treaties guaranteeing extraterritorial rights in Korea were also obtained by: Japan (1876); China (1899); the United States (1882); Great Britain (1883); Germany (1886); Russia (1884); Italy (1884); Austria-Hungary (1872); Belgium (1901); Denmark (1902).³

In other Far Eastern States extraterritorial rights were also enjoyed formerly. Thus, in Borneo, the United States acquired extraterritorial rights by a treaty of 1850, and Great Britain in 1856. In Tonga, Great Britain (1879), the United States (1886), and Germany (1876) enjoyed extraterritorial privileges until Great Britain established a protectorate over the islands; and in Samoa the United States (1878), Germany (1879), and Great Britain (1879) had extraterritorial rights until the division of the islands between the United States and Germany in 1899.⁴

In Korea, Samoa, and Tonga extraterritorial rights ceased when these territories passed under the dominion of a Great Power. In Siam and Japan a different procedure was followed. In the ensuing section a sketch of the manner in which consular jurisdiction terminates will be attempted.

V. TERMINATION OF EXTRATERRITORIAL JURISDICTION

The principle that extraterritorial rights will terminate when the legal system of a country has improved to such a state that it can be recognised by extraterritorial Powers has received frequent affirmation from treaties. In addition to the recent treaties with China, already noted, the protocol attached to the treaty of

¹ Shih, *op. cit.* pp. 93-94.

³ *Ibid.*

² *Ibid.* p. 93.

⁴ *Ibid.* p. 94.

November 26, 1883, between Great Britain and Korea may be cited. It declares :

“ With reference to Article III of this Treaty, it is hereby declared that the right of extraterritorial jurisdiction over British subjects in Korea granted by this Treaty shall be relinquished when, in the judgment of the British Government, the laws and legal procedure of Korea shall have been so far modified and reformed as to remove the objections which exist to British subjects being placed under Korean jurisdiction, and Korean Judges shall have attained similar legal qualifications and a similar independent position to those of British Judges.”¹

In the course of a careful study of the methods by which extraterritorial rights are terminated, Dr. Shih notices annexation, as was the case, *e.g.*, in Korea, Tripoli, and Madagascar. This method calls for little comment, as the annexing Power makes itself directly responsible for the administration of justice and the protection of foreign rights. A second method is by transfer of jurisdiction, examples of which are furnished by the leased territories in China, where the lessee Power makes itself responsible for the proper protection of foreign interests. Again, separation of a portion of a State from the remainder, where the State is subject to extraterritoriality, may bring about a cesser of these rights, although not necessarily immediately. The best examples of this are furnished by the Balkan States. Being Christian, the *raison d'être* of the Capitulations vanished in respect of these States when separation from the Ottoman empire occurred. In some cases further assurance of the proper administration of justice and the protection of foreign rights was required before the rights were finally abandoned.² In protected territories previously subject to extraterritorial jurisdiction, the protecting Power has usually been able to secure the relinquishment of extraterritorial rights shortly after the establishment of the protectorate.³ The special position of Egypt requires brief notice. As a section of the Ottoman dominions, foreign Powers enjoyed extraterritorial rights in the country in virtue of the Capitulations.

¹ See also the protocol to the treaty of February 25, 1858, between Siam and Japan.

² The reader should consult, on this point, chap. vii. of Dr. Shih's work (unfortunately there is no discussion of the recent abrogation of extraterritorial rights in Albania).

³ *Ibid.* chap. viii.

In the second half of the nineteenth century the situation was therefore one of some complexity, and was described by a recent commentator as follows :

“ There were at the end of 1875 fourteen different foreign Courts meting out justice on Egyptian soil. There were also Thirteen non-Muhammadan Ottoman Communities which had judicial systems in working order. In addition to this, the *Makham Sharia* was the ordinary common law Court ; and various Muhammadan tribunals completed this judicial network. In a word, the Turkish emblem flew over a land, and not over a people. Law was personal, and not territorial.”¹

In 1875 it was decided to institute the Mixed Tribunals at Alexandria, Cairo, and Mansourah. In these tribunals a preponderant number of foreign judges, in the service of the Egyptian Government, sit, and their independence is guaranteed. In civil matters the courts hear all disputes affecting foreigners and natives, and between foreigners of different nationalities, except questions of personal status, and criminal cases arising out of infringements of police regulations committed by a foreigner, and certain more serious crimes. There is a Court of Appeal at Alexandria.

On the establishment of the British Protectorate in Egypt in 1914 a number of Powers renounced their outstanding rights of consular jurisdiction altogether. Germany and Austria lost all extraterritorial rights in Egypt by the treaties of peace.² The renunciation of the British protectorate in 1922 made no difference in the position. Consequently, some Powers, and notably the United States, still retain a limited form of consular jurisdiction in Egypt.³

A further method of terminating extraterritorial jurisdiction is by denunciation on the part of the Power subject to it. This was unsuccessfully attempted by Turkey in 1881, and again in 1914. In each case the Powers protested on the ground that, being bilateral agreements, Turkey was not competent to repudiate them at will. At the First Lausanne Conference on Near Eastern Affairs, 1922-23, Turkey advanced, as a further

¹ Pierre Crabitès, “ The Fiftieth Anniversary of the Mixed Tribunals of Egypt,” *The Nineteenth Century*, March 1926, pp. 336-337.

² Treaty of Versailles, Art. 147 ; Treaty of St. Germain, Art. 102.

³ Shih, *op. cit.* pp. 173-174.

reason, the doctrine of *rebus sic stantibus*. Eventually Turkey discontinued this line of argument and sought the termination of the right in diplomatic negotiation. It may therefore be asserted with safety that unilateral cancellation in this way is generally regarded as contrary to the established principles of international law. Accordingly, it follows that the similar action recently adopted by the Chinese Government in respect of the Belgian and Spanish treaties (resulting in the submission of the dispute by Belgium to the Permanent Court) is equally contrary to principle. Of the doctrine of *rebus sic stantibus*, it is sufficient to observe that, as invoked by Turkey in 1923, and by China in 1926 and 1927, it is sufficiently wide to excuse any Power from obligations solemnly undertaken by treaties when it no longer considered it convenient to fulfil them. It is inconceivable that international law could incorporate such a doctrine, and its validity survive. It should be noticed, however, that there is one form of unilateral denunciation which is perfectly legitimate. Since war terminates all treaty obligations except those which are expressly intended to survive during the continuation of hostilities, a declaration of war between States, one of which enjoys extraterritorial rights in the territory of the other, terminates those extraterritorial rights. Thus China's entry into the Great War terminated the extraterritorial rights of Germany and Austria-Hungary in China.

The last method by which extraterritorial rights may be terminated is by negotiation and renunciation, usually followed by a treaty incorporating the renunciation. In this way German and Austrian extraterritorial rights in Turkey were ended by treaties of 1917 and 1918, and Russian extraterritorial rights were terminated by a treaty of January 6, 1921. In the following year the question of the Capitulations generally was discussed at Lausanne.¹ Eventually, by the Treaty of Lausanne, of July 24, 1923, the Capitulations were declared abolished, and foreign legal counsellors were appointed to the Turkish Ministry of Justice.

The comprehensive reforms carried out by Japan, leading to the adoption and enforcement of a code of laws based on the European model, paved the way to relinquishment of extra-

¹ The negotiations are set out by Dr. Shih, *op. cit.* chap. x.

territorial rights in that country. In 1892 Portugal and Hawaii abandoned their extraterritorial rights, and a series of treaties, concluded between 1894 and 1899, provided for a general abandonment in 1899.

In Siam the movement for the abolition of extraterritorial rights has followed a somewhat different course. An International Court of Siamese judges administering Siamese law was established in 1883, and Great Britain consented to the exercise of jurisdiction by it in cases involving British subjects in three provinces. In 1884-5 and 1896 this was extended to other provinces. France, Denmark, and Italy followed. In 1909 Great Britain placed all registered subjects in Siam within the jurisdiction of the court, and Denmark made a similar arrangement in 1913. By the treaties of peace, Germany, Austria, and Hungary lost all extraterritorial rights in Siam, subject to the right of evocation of any case in which an American subject is defendant.¹ Other nations (*e.g.* the Netherlands) have expressed their willingness to conclude similar treaties.

In Persia the Soviet renounced its extraterritorial rights by treaty in 1921, and in China it also renounced its extraterritorial rights in 1921 and 1924. As far as the extraterritorial rights of other foreign Powers in Persia are concerned, these have been terminated, as a result of negotiation, since May 10, 1928. There are, however, certain judicial safeguards (as in Turkey since 1923) for foreigners. Thus, in the British Treaty of 1928 with Persia, it is provided that British subjects are amenable to the jurisdiction of the police courts, but fines only may be imposed on them. Moreover, they must be brought before a competent judicial authority within twenty-four hours, bail being admitted except in case of heinous crime. Search or entry of British residences can be made on the order of the competent judicial authority. When arrested, British subjects may communicate immediately with the Consul, who may be present at the trial. A new Persian code has been completed, and will be enforced for a period experimentally.²

Apart from special circumstances, therefore, such as annexation or separation, the more general form of termination of extraterritorial rights results from negotiation, leading to the

¹ Shih, *op. cit.* chap. x. sect. iv.

² *The Times*, May, 1928.

conclusion of a new treaty, when judicial reorganisation in the country subject to the rights has reached a sufficient stage of development. Could the restoration of order be achieved in China, with the resultant enforcement of the new Codes which have been prepared, there seems little doubt that subject to satisfactory guarantees relating to foreigners extraterritorial rights in China would quickly disappear.

APPENDICES

APPENDIX I

TRIAL OF A FRENCHMAN, 1736

December 22.—Some of the French Gentlemen three or four months agoe went a shooting at Whampo, and by accident one of their Pieces went off as they were getting into their Pinnacle returning from their Sport, and shott a Chinaman who died the next day. The Mandarines upon this insisted on their delivering up one of their people, which they did, and he has been kept in prison ever since, tho noways concerned in the affair. Yesterday the Tryal came on before one of the Inferiour Courts and Mr. Devulaer the French chief being called upon appear'd and was order'd to kneel and told that if he did not he should be sent to Prison, so he submitted and was used very Insolently during the Tryal. The Decision was deferr'd till another hearing and the Man that has been so long confined was remanded to prison.

December 26.—Mons^r. Devulaer keeps within the French Factory and gives out that he is on board the *Pondicherry* ship at Whampo for fear of being obliged again to appear before the Mandarines upon account of the Chinaman that was killed. It's said they demand ten thousand Tales to make it up.

January 4.—Mr. Devulaer the French Chief appear'd a second time yesterday before the Fanghoyen upon the affair of the Chinaman that was accidentally killed, and after a hearing of several hours he was order'd to close confinement. The Principal Merchants staid there all night, but none of them were admitted to go and speak to him. The Compradores of the French Factory and of their ships, were tortured till they accused Mr. Devulaer of the Murder, and it's said He himself was threatened with it if he would not confess.

January 6.—The French chief was released to-day it's said by means of the Chuntuck's pay de casa, who came to Canton yesterday and is now at Ton Honqua's house.¹

¹ *China Diary*, xl. pp. 82, 89, 90.

APPENDIX II

THE *LADY HUGHES* AFFAIR, FROM A CONTEMPORARY AMERICAN
SOURCE

The first American vessel to China sailed from New York on February 22, 1784. Soon after its arrival the *Lady Hughes* affair occurred. The following is an extract from a letter from Samuel Shaw, who describes himself "agent for commerce" for the charterers, to Mr. Jay of the "office of foreign affairs" at Washington :

"The other occurrence, of which I beg leave to take notice, gave rise to what was commonly called the Canton War, which threatened to be productive of very serious consequences. On the 25th of November, an English ship, in saluting some company who had dined on board, killed a Chinese, and wounded two others, in the mandarin's boat alongside. It is a maxim of the Chinese law, that blood must answer for blood ; in pursuance of which, they demanded the unfortunate gunner. To give up this poor man was to consign him to certain death. Humanity pleaded powerfully against the measure. After repeated conferences between the English and the Chinese, the latter declared themselves satisfied, and the affair was supposed to be entirely settled. Notwithstanding this, on the morning after the last conference (the 27th), the supercargo of the ship was seized while attending his business, thrown into a sedan chair, hurried into the city and committed to prison. Such an outrage on personal liberty spread a general alarm ; and the Europeans unanimously agreed to send for their boats, with armed men, from the shipping, for the security of themselves and their property, until the matter should be brought to a conclusion. The boats accordingly came, and ours among the number ; one of which was fired on and a man wounded. All trade was stopped, and the Chinese men-of-war were drawn up opposite the factories. The Europeans demanded the restoration of Mr. Smith, which the Chinese refused, until the gunner should be given up. In the mean while, the troops of the province were collecting in the neighbourhood of Canton ; the Chinese servants were ordered by the magistrates to leave the factories ; the gates of the suburbs were shut ; all intercourse was at an end ; the naval force was increased ; and many troops were embarked in boats ready for landing ; and every thing wore the appearance of war. To what extremities matters might have been carried, had not a negotiation taken place, no one can say. The Chinese asked a conference with all the nations except the English. A deputation, in which I was included for America, met the Fuen (fooyuen), who is the head magistrate at Canton, with the principal officers of the province. After setting forth, by an interpreter, the

power of the emperor, and his own determination to support the laws, he demanded that the gunner should be given up within three days ; declaring that he should have an impartial examination before their tribunal, and if it appeared that the affair was accidental, he should be released unhurt. In the mean time, he gave permission for the trade, excepting that of the English, to go on as usual ; and dismissed us with a present of two pieces of silk to each, as a mark of his friendly disposition. The other nations, one after another, sent away their boats, under protection of a Chinese flag, and pursued their business as before. The English were obliged to submit ; the gunner was given up ; Mr. Smith was released : and the English after being forced to ask pardon of the magistracy of Canton, in the presence of the other nations, had their commerce restored. On this occasion, I am happy that we were the last who sent off our boat, which was not disgraced by a Chinese flag ; nor did she go until the English themselves thanked us for our concurrence with them, and advised to the sending her away. After peace was restored, the chief and four English gentlemen visited the several nations, among whom we were included, and thanked them for their assistance. The gunner remained with the Chinese,—his fate undetermined.

“ Notwithstanding the treatment we received from all parties was perfectly civil and respectful, yet it was with peculiar satisfaction that we experienced, on every occasion from our good allies the French, the most flattering and substantial proofs of their friendship. ‘ If,’ said they, ‘ we have in any instance been serviceable to you, we are happy ; and we desire nothing more ardently than further opportunities to convince you of our affection.’ The harmony maintained between them and us was particularly noticed by the English, who, more than once, observed that it was matter of astonishment to them, that the descendants of Britons should so soon divest themselves of prejudices, which they had thought to be not only hereditary, but inherent in our nature.”¹

APPENDIX III

NOTE RELATIVE TO THE SUSPENSION OF THE TRADE OF THE EAST INDIA COMPANY AT CANTON, IN 1807.²

The riots and irregularities which frequently took place when the sailors from the Company’s ships were allowed to visit Canton on

¹ *The Chinese Repository*, v. pp. 221–222.

² This subject has been already noticed ; but, as the case is curious, and has been much misrepresented, it is conceived that a fuller narrative of it, taken from the notes which were made by the author at the time, will not be unacceptable.

Although the privilege of frequenting Canton on liberty is no longer expressly granted to our seamen, it is not to be supposed that they do not

liberty are well known. An affray arising from this source, of a very curious nature, commenced at an early hour in the morning of the 24th of February, 1807, in a street in the neighbourhood of the European factories, where the sailors are usually enticed to purchase liquor, and are generally, in the end, plundered of whatever property or money they may happen to have brought with them. On the first appearance of a disposition to riot, the captain and officers of the *Neptune* (the ship to which the sailors then at Canton on liberty belonged) actively interfered and exerted themselves to restore order among their people. In a short time they were enabled to secure them all within their factory, where they would in all probability have quietly remained, had not the Chinese populace behaved in the most outrageous manner, and collecting together in great numbers, continued during the greatest part of the day, to throw stones at the factory and at every European accidentally passing, although the security merchants, and the mandarins on the quay, were repeatedly but ineffectually called upon to interfere and disperse them.

The sailors were so exasperated by this conduct, especially as some of them had actually been severely wounded by stones thrown in at the gate, that they eluded the vigilance of their officers, and twice rushed out upon their assailants, whom they easily and almost instantly dispersed. In the course of these sallies, however, they had unfortunately the opportunity of striking and wounding several of the Chinese ; but there was no reason to suppose at the time, that any individual had been very seriously injured, and no complaint of that kind was made.

On the 27th instant however, three days after the affray, it was reported that a Chinese had died in the city, on the preceding morning, in consequence of the wounds which he was said to have received on the 24th. The Select Committee of Supercargoes, immediately on receiving this information, sent for the Hong merchant, Mow-quah, who was the security merchant for the *Neptune*, and requested him to use every means in his power to prevent the interference of the mandarins, or the accident being in any manner officially reported to them. They then learnt from him, that unfortunately the proceedings in this case had already advanced so far as to render hopeless any attempt to suppress the enquiry, especially as the deceased, although an individual of the lowest class, was in some degree a dependant on the family, and therefore under the peculiar protection of the Chong-quan, or general of the Tartar troops, a mandarin of the highest rank and influence.

It did not appear that the relations of the deceased attempted to charge the crime against any particular individual ; but the evidence respecting the time and place in which the accident happened, was determined by the Chinese magistrate, to be sufficient to fix the guilt upon the sailors of the *Neptune* generally. The Select Committee

occasionally proceed to that city on duty, and even sometimes by way of indulgence. Similar difficulties, therefore, with those here related, may easily recur again, and it is certainly useful to trace the means by which they have been met, and overcome, under the present system (Staunton's note).

was in consequence verbally called upon, on the 28th of February and afterwards officially by edict, on the 2nd of March as representatives of the nation to which the ship belonged, to find out and deliver up the person who had struck the unfortunate blow, that he might be tried and punished according to the laws of China.

The line of conduct, which, however painful to their feelings, it would have been the duty of the Select Committee to have pursued, if the individual could have been ascertained, was sufficiently obvious. The propriety, and indeed, necessity, of complying with the laws of the country in which he resided, by delivering up a person charged, upon any reasonable grounds, with a capital offence, could hardly be disputed.

It was immediately however foreseen, that the discovery of the person who struck any particular blow, among such a mixed multitude, especially as the wounded individual had not made himself known at the time, would be extremely difficult, if not absolutely impossible.

In the probable event therefore of their failing to accomplish that object and of the Chinese mandarins nevertheless persisting in their demand, the most serious embarrassments were justly to be apprehended. It was impossible to predict what might be the consequence of persevering in an opposition to the demands of such an arbitrary and despotic government ; still it was quite clear, that no emergency or consideration of expediency could, for a moment, justify them in deprecating its resentment, by selecting any person for punishment, of whose guilt they were not previously fully satisfied.

To maintain their ground on those points which could not, under any circumstances, be relinquished ; and, at the same time, to avoid coming to such extremities with the Government as might be attended with the most embarrassing consequences, and occasion at least a temporary sacrifice of the whole of our valuable trade with China, was felt by the Select Committee to demand, from the very outset, the utmost caution and moderation in their proceedings. The principle which they laid down for themselves upon the occasion, was to omit no means in their power of satisfying the Chinese Government, that their endeavours to ascertain the guilty person were sincere ; to comply without hesitation with every just and reasonable demand that might be made ; and carefully to avoid betraying any disposition to have recourse to offensive or defensive force, unless absolutely compelled to do so, for the protection of their persons and property.¹

Conformably to these resolutions, the Select Committee twice appointed a Special Committee, consisting of commanders of the Company's ships, to proceed on board the *Neptune*, for the purpose of investigating into the circumstances of the affray ; first, immediately

¹ One of the principal causes of the failure of the supercargoes, in a similar case, in 1784, appears to have been a precipitate recourse to strong measures, and to a line of conduct, which they had not previously decided, in any event, to persevere in. The seizure, however, by the Chinese, of an innocent person as an hostage, to ensure compliance, no doubt aggravated the difficulties of the case in that instance (Staunton's note).

upon being apprised of the accident, and secondly, after having been furnished with all the evidence the Chinese Government had to produce in support of their demand.

The evidence collected during these successive inquiries, afforded ample proof of the activity of several individuals concerned in the affray, but the Chinese having themselves no clue to offer which might have assisted their researches and led to a discovery, it was found altogether impossible to obtain any evidence by which the offence, specially alleged, could be fixed upon any particular person. The Select Committee in consequence declined proceeding themselves into any further investigation ; as all such inquiries, unless they offered a reasonable expectation of their terminating with the conviction of the offender, were found to be only productive of dangerous and inconvenient delay, by encouraging the mandarins in a fallacious hope that their requisitions would ultimately be complied with.

The government still happily refrained from having recourse to any measures of open violence, or from any private attempts at the seizure of any of those persons among the Europeans, whom, in such cases, they consider responsible ; but there was every reason to believe that this forbearance, so different from the system of conduct pursued in the case of the unfortunate gunner of a country ship, in the year 1784, was much less to be ascribed to a spirit of mildness and moderation, than to a consciousness of the weakness of their case, and a distinct perception of the very great additional weight and respectability which the English name had, from various causes, acquired in China, with the preceding twenty years, and which might reasonably have excited a suspicion, that acts of extraordinary outrage and unjust aggressions would not be so likely, as before, to be committed with impunity.

The mandarins placed also, it is probable, considerable reliance on the result of their less violent, but almost equally embarrassing expedient, of detaining the ships which were then loading for England. It was obvious that, at such an advanced period of the season, this detention would be productive of great anxiety and uneasiness to the Select Committee, as well as detriment to the interests of the Company. They consequently suspended the trade generally of the Company, from the 4th to the 31st of March ; and continued the suspension specially, in respect to the particular ship *Neptune*, until the 15th of the ensuing month.

During the interval, the demands of the government were repeatedly urged in a succession of edicts, issued from the various public tribunals, and also in the course of numerous personal conferences between the Select Committee, and the several mandarins, who had been deputed by the viceroy to communicate with them on the subject, at the factory.

In the public edicts one uniform language of demand was of course adhered to, but in the private conferences in the factory, almost every species of argument and art of persuasion was in turn resorted to. When the impending rigour of the laws, aggravated by delay, and the still more fatal consequences of the emperor's displeasure, had been

expatiated upon in vain, the feelings of the gentlemen of the factory were next assailed by a positive declaration, that the unfortunate Hong merchant Mowqua, who was security for the ship *Neptune*, would be the first victim for their resistance—that his ruin and disgrace would be the inevitable consequence. This was felt to be not altogether an idle threat. The Committee were fully sensible, that the mandarins would feel little hesitation or remorse in proceeding to extremities against that innocent and highly respectable merchant, as they had already actually ordered the infliction of severe corporal punishment on one of the Chinese attendants of the ship, with equal injustice. The danger indeed in which that esteemed merchant, who was engaged at the time in a series of very extensive dealings with the Company, was obviously placed, would, in almost any other case, have had the greatest influence upon their determinations.

The mandarins had already availed themselves of several arguments and insinuations, which they hoped might operate, by producing some degree of personal intimidation, though they did not venture, in this instance, to commit themselves in any act of positive or direct aggression. The personal responsibility of the chief of the factory for the murder, in the event of the real offender not being surrendered to their tribunals of justice, was more than once hinted at ; and they at length extended this principle of responsibility so far, as to observe to the writer of this paper (who at the request of the committee interpreted the conversation upon the occasion), that he, also, would be considered as one of the parties implicated in the transaction, and might find himself among the first sufferers for it, in the event of the result of the negotiation not corresponding with the wishes of the government.

To this extraordinary and unexpected declaration, after having communicated it to the rest of the English gentlemen present, he replied, that neither the chief of the factory, nor himself, would ever shrink from any responsibility which justly attached to them. They certainly, however, wholly disregarded that responsibility which was absurdly and ridiculously attempted to be grounded on a mediation which was unquestionably equally desirable to both parties, namely, the faithful and distinct interpretation of their respective sentiments to each other. He further observed to the Chinese officer, with the approbation and concurrence of the members of the committee, that although the English were not very liable to be actuated by the impulse of fear, they possessed a keen sense of an insult ; and that it was, therefore, absolutely necessary, if the mandarins wished that any further conversation should proceed through the same channel, that they should in future cautiously abstain from all observations of a menacing or personal nature.

It was gratifying to perceive the immediate and very salutary effect this reply produced, in lowering the tone of the Chinese authorities ; and it may be truly said that from that moment, they confined themselves, with little deviation, to that more conciliating and accommodating course, which at length happily conduced to the final and satisfactory adjustment of the dispute.

While the discussions were pending, the Select Committee, conceiving it might have the good effect at least of tending to convince the government, that the discovery of the offender was impossible, permitted the Hong merchant, Mowqua, publicly to offer, from himself, the immense reward of 20,000 dollars, to any person or persons, who might come forward and give such evidence as would satisfactorily convict any individual of the perpetration of the supposed murder. The proposal was universally rejected by the seamen with indignation ; although, with a view of rendering it more palatable, the Chinese mandarins repeatedly declared, that the culprit was only required for trial ; and, that matters would be so arranged, that his life would not be endangered.

This pledge could not indeed have been expected to be very implicitly relied upon, after the failure of a similar one, given in a much more solemn manner, in the case of a gunner, who was delivered up to the Chinese, in the year 1784. That unfortunate man, at the very same hour that the Committee were invited to the viceroy's palace, within the city of Canton, to hear the Imperial Edict read, which they had been led to hope would have contained an order for his release, was unfeelingly strangled upon the public place of execution without the walls.

A more plausible proposition was afterwards made, by the offer of permission to load and dispatch to England all the other Company's ships, provided the Select Committee would engage, in writing, to make no attempt to send away the ship *Neptune*, until the existing differences were adjusted. Ignorant however of the precise degree of responsibility that might be considered to attach to so unusual a step, and doubtful how far it might be construed into an admission of the guilt of the sailors of the *Neptune* collectively, which, as there had been sailors of other ships and nations at Canton, on the day of the accident, they were by no means prepared to do, the Select Committee felt it their duty to decline making themselves a party to any such arrangement. Though it certainly would have been attended with some temporary advantages, it would have had a prejudicial effect, by diminishing the responsibility of the mandarins themselves for the suspension of the trade, which was suspected to be beginning to be considerable ; and perhaps thus leave them at liberty to protract almost without limit the final settlement of a question, upon which the security and prosperity of the trade so materially depended.

At length, on March 31, the Chinese government, appearing convinced that the British authorities were sincere in their declaration of their inability to discover the real culprit, and no less in earnest in their determination not to deliver up any other, granted permission for the re-opening of trade in respect to all ships of the Company, excepting the *Neptune*, on the condition that all the sailors of the *Neptune*, who had been concerned in the riot of February 24, should, as had been before offered, be brought up to Canton, for the purpose of a personal examination of them by the Chinese mandarins themselves, at the

British factory, and in the presence of the Select Committee ; who likewise readily stipulated, that if any individual should be fairly convicted of the murder in the course of the inquiry, he should be delivered up without hesitation.

It was not to be expected, however, that the arrangement to be made in so novel and unprecedented a case, as that of a Chinese court of justice holding its sittings within the precincts of the British factory, and the subject to have its proceedings controlled by the presence of the British authorities, would be effected without much discussion. In fact, the Chinese strongly insisted for some time, that examinations of this judicial nature could only be carried on at the regular tribunals within the city, and that they should also have the liberty to employ engines of torture to draw from the sailors the required confession ; both which points they finally relinquished with much apparent reluctance, and only because they were peremptorily refused.

Under the unusual restrictions thus imposed upon them, the Chinese judicial officers felt very much at a loss how to act ; and being sensible to the disadvantages to which they exposed themselves, by undertaking an inquiry which was likely to prove fruitless, and yet must naturally be considered as final, they became extremely averse to opening the proceeding at all, wishing, as originally demanded, that the Select Committee would themselves undertake the inquiry ; but this having been already effected to the utmost extent in their power, was decidedly refused.

The mandarins, under these circumstances, and finding that the Select Committee had decided not to detain the seamen at Canton, or any other terms, and that in fact, any long detention of them might lead to a renewal of those unfortunate scenes of riot and disorder, which both parties lamented, commenced their examinations in form on March 8, the Quang-cheou-foo, or governor of the city, presiding, with a court of six other officers, as assessors.

Although most of the forms and solemnities of a Chinese court of justice were observed upon this occasion, the British authorities had the satisfaction of obtaining the concession in their favour of every essential point of etiquette. Seats were specially provided for the Captain of His Majesty's Navy then in China, the members of the Select Committee, and the secretary of the board, within the limits of the court : arrangements were also made, by which minutes could be regularly taken down in English, as well as in Chinese, of all the proceedings ; and two marines from His Majesty's ships were allowed to keep guard with fixed bayonets, at the entrance of the factory, in view of the court, during the whole of the proceedings.

The mandarins did not attempt to produce any Chinese evidence whatever against the men of the *Neptune* ; and when called upon by the Select Committee to do so, they acknowledged that they did not possess any that was conclusive. They proceeded therefore to put a few simple questions to each of the seamen, through the medium of the Chinese linguist, and (as might have been expected) obtained no

answers (with the exception of the fact of their having been in liquor, which was generally acknowledged), tending in the least degree to criminate any of the parties.

Captain Buchanan and his officers having however been questioned respecting the conduct of each of the seamen, as they were successively brought into court, readily acknowledged that a great proportion of them had been troublesome and disorderly ; and eleven of those, who were recollected to have been the most active, having been particularised, the mandarins intimated their intention of returning to examine them, separately from the rest, on the succeeding day. The second examination however proved as inconclusive as the first ; and the commander and officers of the ship having assured the mandarins, that they considered the eleven men to have been all equally active, and therefore equally guilty, it might have been supposed that, had the attainment of justice only, and a due execution of the laws, been their sole object, these purposes might have been sufficiently answered, by decreeing some punishment on those eleven sailors, who were acknowledged to have been disorderly, proportionate to their misconduct.

There was, however, but little real reason to hope that such an adjustment of the business was practicable. It was upon record, that a man had been killed, and the magistrate having failed to discover the perpetrator of the deed, each and every individual, connected with the administration of justice on the spot, from the petty local judge up to the viceroy of the whole province, was, according to the severe and undistinguishing policy of the Chinese law, liable to more or less censure and punishment for the failure.

An avowal of the real state of the case would indeed, perhaps, sufficiently account for the impracticability of fixing the crime on any individual culprit ; but, even if such a justification would be admitted in the superior tribunals of China, the mandarins would have been unable to offer it, without at the same time disclosing their disgraceful neglect of the police, and their want of vigilance and exertion, in checking the riotous disposition of the Chinese populace, at the time the unfortunate occurrence took place.

Without therefore imputing to the provincial government any sanguinary desire to sacrifice the life of a European, or even an inclination to provoke further discussion upon a subject, which however embarrassing to the Committee, was little less so to themselves, it was evident, that the pursuit would never be relinquished by them, nor any mutual understanding on the subject accomplished, until some individual could be selected, so as to render their inquiries apparently successful, and, in some measure, maintain the credit of the local administration of the province, as well in the eyes of the people, as their own statement of the affair to the emperor.

The arrangement, which the Chinese mandarins devised for the purpose of relieving themselves from this difficulty, was to fix, without any further evidence, and, in fact, almost at random, upon some one individual ; but, at the same time, to render the delivery of the person

of such individual into their hands unnecessary, by shaping the charge against him in such a way, as should effectually acquit him of all ill-intentions ; under which circumstances the nominal punishment would be redeemable, by the Chinese laws, by the payment of a trifling fine.

This plan, provided no unwarrantable conditions were annexed to it, was one to which the Select Committee had certainly no right to object ; and, as it realised every substantial object they had in view, namely, the renewal of the trade, without the sacrifice, or even the exposure to danger, of the life of an innocent person, or any other disgraceful compromise or concession, it was, in fact, under all circumstances an extremely satisfactory arrangement. The Select Committee, at the same time, most decidedly refused to sanction, or in any manner whatever to become instrumental in, any of the fictitious statements of the affairs, which the Hong-merchants represented to them, would probably be adopted by the mandarins with a view to facilitate the proposed adjustment ; to a general acknowledgment, however, from Captain Buchanan, that the eleven sailors had all of them struck Chinese in the course of the affray, they had no difficulty in consenting.

The mandarins accordingly assembled for the third time, on April 13, to conclude their inquiries, and proceeded, upon the slight grounds they thus possessed, to pronounce a decision, against one of the seamen, named Edward Sheen, desiring that the rest should be dismissed to their ship, to be punished by their commander, in such manner as he thought proper ; but, that the individual selected should be retained in the British factory, under the charge of the British authorities, until the emperor's pleasure was known. At the same time, permission to load the *Neptune* was granted ; so that the suspension of the trade, on account of the unfortunate affray of February 24, then in effect terminated.

The subsequent proceedings were of little consequence. The sailor, Edward Sheen, continued to reside at the factory, (accompanying the establishment, during the summer, to Macao) until the following year ; when, the emperor's sanction to the sentence of accidental homicide, redeemable by a nominal fine, having been received from Peking, he was dismissed to England, by the Select Committee, with the express consent and approbation of the Chinese authorities.¹

APPENDIX IV

THE TERRANOVIA AFFAIR FROM A CONTEMPORARY AMERICAN SOURCE

The following account of the trial of Terranovia was written on Sunday, October 6, 1821. It was reprinted in *The Chinese Repository* of September 1836 :

¹ Staunton, *Miscellaneous Notices relating to China, etc.*, pp. 259-281.

“ On October 5, 1821, the committee of the American gentlemen at Canton, to whom Captain Cowpland, of the ship *Emily*, had applied for advice and direction for the government of his conduct, relative to the trial of Francis Terranovia, received a communication from the committee of the hong merchants of the following purport, viz. : that the viceroy of this province had issued orders to the Pon-ue to repair on board that ship the next morning, and there proceed to try the said man for the crime of which he was accused ; the Chinese having acceded to the propositions previously made, that he should have a fair and impartial trial, and that both American and Chinese witnesses should be examined ; at the same time refusing to grant permission to the Rev. Morrison to attend as interpreter, on the ground of his being attached to the British factory, and their determination not to allow the interference of those attached or belonging to any other nation. These things having been communicated to Captain Cowpland who was then at Whampoa with his ship, the majority of the committee, as there was no time to receive his answer before it was necessary to be on board, proceeded directly to Whampoa, and early the next morning, Saturday, October 6, assembled on board the *Emily*, previously to the arrival of the Pon-ue. They found that the vessel had been prepared in the most suitable manner, for the business in hand. Arms of every kind had been removed, and the crew of the vessel, (with the exception of the prisoner, who was confined in a state-room, guarded by two American officers) were stationed on the fore-castle, which they did not leave during the day. Eight hong merchants attended at the trial.

“ About eight o'clock in the morning, as the Pon-ue's boat attended by a number of Chinese men-of-war's boats approached the ship, Captain Cowpland, with the linguist Cowqua, joined him, and came alongside in the boat with him. Captain Cowpland immediately went on board his vessel, and was required by the hong merchants there assembled, to take the prisoner, and go with him on board the Pon-ue's boat, that the Pon-ue, agreeably to the Chinese criminal practice, might look him in the face. Captain Cowpland hesitated to comply with this demand, regarding it as substantially a surrender of the prisoner, without the stipulated trial. Howqua, however, pledged himself, that, as soon as the ceremony had been performed, Terranovia should be brought on board the ship, and no further opposition to this demand was made. Howqua then required that the prisoner should be handcuffed, which was promptly refused. Captain Cowpland having pledged himself for the safe-keeping of the prisoner till after his trial, and the Chinese having agreed to leave Terranovia in his custody, he refused to put him in irons, on the ground that no prisoner is thus confined in America, during the progress of his trial. As they had chosen to try the accused on board an American ship, they must permit him to be treated as an American prisoner, till the conditions acceded to by them had been complied with ; that is, till he had a fair and impartial trial. Should he be found guilty, they would then have a

right to secure him, as they pleased. On this explanation, the demand was waived, Terranovia himself having promised to demean himself peaceably. Captain Cowpland accompanied the prisoner into the Pon-ue's boat, still lying alongside, and after remaining there a short time, they were sent back by the Pon-ue, to the *Emily*.

"In a few moments, a number of Chinese officers of the suite of the Pon-ue came aboard, bearing the insignia of that magistrate. They were received by the eight hong merchants, who had already been on board more than an hour, viz. : Howqua, Mowqua, Chonqua, Pacqua, Kengqua, Consequa, Gowqua, and Poonqua. The Pon-ue himself soon came on board, bringing with him all the witnesses on the part of the government, and a considerable retinue. As soon as he was seated, the linguist made out and handed to him a list of the names of the committee, noting those who had not yet arrived. This committee consisted of twelve or fifteen of the most respectable American merchants at Canton.

"Pacqua, the security merchant of the *Emily*, and Cowqua the linguist, being called, fell on their hands and knees, to hear the demands of the Pon-ue, of which the Americans could get no interpretation. Captain Cowpland was next called. The question asked him, whether Pacqua was his security merchant, and Cowqua his linguist, being answered in the affirmative, he was required to bring forward the prisoner. This was done. Terranovia approached the table at which the Pon-ue sat, the fatal jar with which he is accused of having struck the woman, and is supposed to have caused her death, was placed before him on the deck, together with the hat she wore at the time. He was questioned whether he knew the jar, whether it belonged to him, or to the ship. He replied with perfect composure and firmness that it was the same jar which he had handed the woman, at the time that he gave her a mace to pay for the fruit she was to put into it ; showing by signs the manner in which he had handed it into the boat. The Pon-ue showed much irritation at any attempt at explanation, and Howqua and the linguist, although repeatedly urged by those assisting the prisoner, evidently did not translate the half of what was urged in his defence. Whenever either of them attempted an explanation, he was silenced by the Pon-ue. Without hearing what the prisoner wished to state in his defence, the Pon-ue called the government witnesses, stating that all he now wished of Terranovia was to identify him—to have him acknowledge himself the seaman who was trading with the woman, and that the jar was the same which he had used. The Pon-ue urged much the same considerations (as far as could be gathered from the limited abilities of the linguist and Howqua as interpreter) as he had urged on the inquest ; and it was conclusive to every unprejudiced mind, that he had prejudged the case, and had only come on board to receive his victim.

"Although these appearances tended greatly to discourage the hope of an impartial trial, the Americans present could not in silence submit to this breach of faith on the part of the mandarins, after having them-

selves complied with all that had been required of them, and they insisted on having their witnesses examined. The Chinese witnesses having been called, the Americans withdrew (such being the usage on a Chinese trial), but not without the assurance, and in the full expectation that their request should be granted. The only witnesses produced on the part of the government were the husband of Ko Leang-she, the woman belonging to the hoppo boat attached to the *Emily*, and two children, apparently between the ages of seven and twelve years. These witnesses approached the Pon-ue's table on their hands and knees, never raising their eyes. When the woman was required to look up, and point out which was the man, although there was no other seaman near, the linguist was obliged to put his finger on Terranovia, to enable her to say, he is the man. She gave a very long account of the affair, in which she was constantly prompted by the oldest child. This circumstance was objected to on behalf of the prisoner, and the linguist was desired to make known the objection to the Pon-ue, but he refused to do so. The linguist then commenced a translation into English of the woman's evidence. It was urged that as she was well known to speak better English than either the linguist or Howqua, she ought to be allowed to repeat her own evidence in English, for the benefit of the Americans, in order that, if it differed from the Chinese version, the falsity might be exposed. This was refused, and on her commencing a few words in English, she was stopped. The Americans were accordingly obliged to submit to the garbled translation made by the linguist. As soon as it was heard, they called on Howqua, in the most solemn manner, to attend to and faithfully interpret what they had to bring forward as testimony, in reply to this first and most material witness, which they assured him would be sufficient, in any court of justice in America, to set aside her evidence. She had just stated that, from the hoppo boat attached to the *Emily*, she had seen the jar thrown. She saw it strike the head of Ko Leang-she; saw her fall into the water; saw that she rose no more, and knows that this is the very man who threw the jar. It was proved in contradiction to this evidence, that from the position of the two boats at the time, it was impossible for her to have seen what passed, the ship being between the two boats; that in the afternoon of the day on which the event happened, and again the next morning, she had stated to Captain Cowpland in the presence of four other American captains (who took it down in writing and signed it, and the paper was forthcoming), that she knew nothing of the affair; that she was inside her own boat, and that her attention was occupied in looking out to see what was the matter with a child which she heard crying in a sampan (boat) that was then floating past the stern of the *Emily*, and near it a woman's hat in the water. Soon after, the husband of the woman (who had been in the sampan) came round the bow of a country ship, which was near, and took the hat out of the water. It was then perfectly whole. He then took up the jar out of the boat which was also perfectly whole, and beat the hat forcibly with the jar. All this Howqua was required

as he valued the truth, faithfully to interpret to the Pon-ue, and it was believed that, as far as his ability extended, he did so. The instrument of torture was then called for by the Pon-ue, and thrown down before the woman, but it was not applied. She persisted in her present story ; and the only satisfaction given to the prisoner's friends was, that now she told the truth, whereas before she told what was not true. One of the children gave some evidence, which was not interpreted. It was urged, on behalf of the prisoner, that neither of the children had witnessed the affair ; but they were afterwards brought from the shore, by the husband of the deceased, and that he came from the side of the country ship, opposite to the *Emily*, and consequently could not himself have witnessed the accident. All this the Americans could prove by the government witnesses.

“ The Pon-ue had, for some time, evinced a desire to close the trial with this evidence, and not to hear anything brought to controvert it. At this moment, with passion in his countenance and violence of language, he declared that all this was of no avail ; that he had seen for himself the hole in the hat and in the head of the woman ; that he had applied the bottom of the jar and found that it fitted the fracture ; that the jar belonged to the man or the ship, and that this was all that was necessary, and that the prisoner must be given up. With this, he rose to depart. It was strenuously urged to the linguist and to Howqua, that the condition of the trial had not been complied with ; they had pledged themselves we should be heard ; there were many ways in which the woman might have come to her death ; she might have fallen in the boat on some pointed instrument, on the iron pin upon the stern, on a nail standing up on the side of the boat, or what was more generally believed, her husband finding the body, might have inflicted the wound, for the purpose of extorting money from the ship. On such evidence, it was urged, the man cannot be given up to suffer the penalty of your laws. Our laws regard every man as innocent, till he is proved to be guilty. We have searched for the truth ; we are not satisfied. If he is guilty, prove him so and he shall be delivered at your own city gates. We have one witness, who saw the jar handed into the boat by the prisoner. He also saw the woman fall out of the boat, at a considerable distance from the ship. Hear his testimony. If you will hear no more than what your witnesses have stated, we are not satisfied. We are under your laws ; execute those laws.

“ We do not resist you ; find the man guilty by a fair and impartial trial (which you have promised), and he will be delivered up to you. If he is not proved so, and you persist in not hearing the evidence, you must take him out of the ship. We will leave her ; no resistance ought or will be made to you. His blood be on your heads.

“ At length the Pon-ue, perceiving the earnestness of the Americans, was induced again to take his seat. He sat a few moments, and the witness alluded to was produced. The Pon-ue heard but a few words of the testimony—silenced the linguist, and rising from his chair, said it was heaven's business ; if he had judged wrong, God would punish

him for it hereafter ; he knew, in his own heart, the man was guilty ; he must be delivered up. With this he left the deck of the *Emily*, and went on board his own boat alongside, with most of his retinue, leaving the hong merchants and linguists to see that he was obeyed.

“ During this mockery of justice, there were on board the *Emily* more than one thousand Chinese. The ship was surrounded by men-of-war boats. The Americans on board did not exceed forty persons ; and the boats of the other American vessels were purposely ordered away. Every thing that could be construed into an offensive weapon had been carefully removed, to show that we considered ourselves completely in their power, and as a respectful compliment to the Chinese authorities, the colors were flying.

“ Howqua, as the oldest of the hong merchants, now acted as spokesman, and required in the Pon-ue’s name, that we should deliver up the prisoner. The same reply was made by us as before ; come and take him. You have the power and you have armed men to exercise it. He again asked, if there would be any resistance, and the most solemn assurance was given, that there should be none. Howqua on this turned to go to the Pon-ue’s boat, as was supposed, to obtain a guard of soldiers to take Terranovia. It was, however, stated to him, that he must understand and must inform the Pon-ue, that the Americans did not consider him as complying with his engagements. He had promised a fair and an impartial trial. It had not been allowed us. We consider the case prejudged. We are bound to submit to your laws while we are in your waters, be they ever so unjust. We will not resist them. You have, following your ideas of justice, condemned the man unheard. But the flag of our country has never been disgraced. It now waves over you. It is no disgrace to submit to your power, surrounded as we are by an overwhelming force, backed by that of a great empire. You have the power to compel us. We believe the man innocent ; when he is taken from the ship we leave her ; and the commander strikes his colors.

“ Howqua considered these last suggestions of so much importance, that he, together with several of the other hong merchants, went down into the Pon-ue’s boat, to communicate their substance to him. Before he could return, the linguist was put in chains on the *Emily*’s deck. The hong merchants, having returned, required that Captain Cowpland should take the man to Canton for a further trial, or put him in Pacqua’s hong, till another and higher mandarin should be ordered to adjudge the case. This was refused by the Americans, on the ground that the Chinese had their option to try the man at Canton or on board the *Emily*. They had chosen the latter, and there we now required, that the trial should be closed. This being communicated to the Pon-ue, he was heard high in words with Howqua, who returned to the ship with the same demand, which he had just made, and to which the same answer was returned. We gave as our ultimatum, that they should come on board on their own responsibility and take out the prisoner, and the ship’s colors should be struck. To this we steadily adhered.

“ This conference lasted several hours. The Chinese persisted in refusing to take the man, and the Americans refusing voluntarily to surrender him. At length, the Pon-ue’s patience being exhausted, he having sat in his boat more than three hours, he went on board the ship and took Pacqua out in chains, commanding him, with the other hong merchants, to follow him to the city, there to lay the whole affair before the viceroy.”¹

APPENDIX V

STAUNTON’S “ REMARKS ON A RECENT DISPUTE BETWEEN THE AMERICANS AND THE CHINESE ”

Since the foregoing pages were written, the particulars have been received of a recent dispute between the Americans and the Chinese at Canton ; which establish very clearly two points of some importance to the question which has been discussed at length in the latter part of this volume : namely, first, that the Chinese Government holds the entire trade of each nation responsible for the conduct of the individuals of that nation, exactly in the same manner and degree, when the trade is carried on by a number of unconnected individuals, as it does when it is carried on under the control of one corporate company—secondly, that a policy in many respects opposite to that which the English at present adopt in China, in cases of homicide, does not conduce to a satisfactory issue.

It appears that on September 23 last, an Italian sailor of the name of Terranova, serving on board an American vessel at anchor at Whampoa, threw an earthenware jar from the ship, at or towards a Chinese woman, who was selling fruit and vegetables in a small boat alongside ; and that the jar having unfortunately struck her on the head, she fell out of the boat and was drowned.

It was evidently very difficult in such a case to determine what degree of blame was imputable to the sailor : he might have been altogether free from any evil intention, and even under the most unfavourable construction of his conduct, it seems quite impossible to suppose him to have been guilty of an act of deliberate murder.

It is altogether a mistake to suppose that the Chinese law in such cases makes no distinction, or that it invariably requires blood for blood, as the Edicts addressed by the government to foreigners insinuate.

The Chinese law not only remits the punishment of death in cases of accident, but defines these cases with considerable accuracy in the following manner :

“ All persons who kill or wound others purely by accident, shall be permitted to redeem themselves from the punishment of killing or

¹ *The Chinese Repository*, v. pp. 223-228.

wounding in an affray, by the payment in each case of a fine to the family of the person deceased or wounded.

“ By a case of pure accident, is understood a case of which no sufficient previous warning could have been given, either directly, by the perception of sight and hearing, or indirectly, by the inferences drawn by judgment and reflection ; as for instance, when lawfully pursuing and shooting wild animals, when for some purpose throwing a brick or a tile, and in either case unexpectedly killing any person ; when after ascending high places, slipping and falling down, so as by chance to hurt a comrade or by-stander ; when sailing in a ship or other vessel, and driven involuntarily by the winds ; when riding on a horse, or in a carriage, being unable, upon the animal or animals taking fright, to stop or to govern them ; or, lastly, when several persons jointly attempt to raise a great weight, the strength of one of them failing, so that the weight falls on, and kills or injures one of his fellow labourers : in all these cases, there could have been no previous thought or intention of doing any injury, and therefore the law permits such persons to redeem themselves from the punishment provided for killing and wounding in an affray, by a fine (about £4 sterling) to be paid to the family of the deceased or wounded person, which fine will in the former instance be applicable to the purpose of defraying the expences attending the burial, and in the latter, to that of procuring medicines and medical assistance.”¹

By shaping the charges against the English seaman in 1807 conformably to the foregoing provisions, the Chinese local government released themselves from the necessity of insisting on the surrender of his person for trial, and at length obtained the Emperor's confirmation of their sentence of final dismissal. A similar termination, effected by the same means, would undoubtedly have been extremely desirable in the case of the unfortunate sailor Terranova ; but even if this could not have been accomplished, it by no means follows, according to the ordinary administration of the Chinese laws, that he should suffer death. A case, apparently of a much stronger nature, occurred within the author's recollection, in which the offender, who was a native of the lowest class and therefore of course without money or other means of influence, was ultimately sentenced to only three years banishment from his native province. He had struck a person in a quarrel in the street, and the blow was so severe that it proved fatal almost immediately.

In fact, the Chinese law, like ours, recognises different degrees of culpable homicide ; and although it professes to punish both murder and manslaughter with death, it distinguishes between them by annexing the more ignominious sentence of beheading in the one case, and that of strangling (by which the body is not mutilated) in the other. When there are no circumstances of peculiar aggravation, the sentence is usually mitigated in practice one degree ; and thus the murderer

¹ Pp. 314, 315. (The reference is to Staunton's translation of the *Ta T'sing Lü Li*.)

only suffers death by being strangled ; and the offender guilty of manslaughter is banished.

The law on the subject is as follows :

“ All persons guilty of killing in an affray ; that is to say, striking in a quarrel or affray so as to kill, though without any express or implied design to kill, shall, whether the blow was struck with the hand or the foot, a metal weapon, or with any instrument of any kind, suffer death by being strangled, after the usual period of confinement.

“ All persons guilty of killing with an intent to kill, shall suffer death by being beheaded, after being confined the usual period.

“ When several persons contrive an affray, in the course of which an individual is killed, the person who inflicts the severest blow or wound, shall be strangled, after the usual period of confinement.”¹

It is to be noted that the words “ After the usual period of confinement,” are carefully annexed to each sentence. This clause, which is not universal, operates in these cases like a reprieve, and affords the sovereign an opportunity of remitting the ignominious part of the sentence in the one case, and of commuting it for banishment, perpetual or temporary, according to circumstances, in the other. This merciful provision of the law appears indeed to have been suspended, in respect to foreigners, by the authority of a special Edict issued at the recommendation of the local government of Canton about 1753. But it certainly cannot be contended that this Edict now forms a part of the immutable laws of the land, and it is so evidently partial and unjust towards foreigners, that if properly remonstrated against, it would hardly be acted upon.

To return to the recent case of the unfortunate sailor Terranova. It is stated that as soon as the circumstance of this accident reached the knowledge of the Viceroy of Canton, an edict was issued by him addressed to the Hong merchants desiring them to call upon the American Consul to deliver up the person of the sailor for trial. This the Americans, it seems, in the first instance, refused to do ; the Chinese in consequence immediately put a stop to the whole of the American trade at Canton, and at the same time the Chinese security merchant, and Chinese linguist of the ship *Emily*, were both arrested, and placed in close confinement within the city of Canton.

A negotiation between the Americans and the local government now commenced, and in the course of it an inferior mandarin, accompanied by a party of American gentlemen, visited the *Emily*, and was permitted to put some questions to the sailor Terranova ; but no decisive step appears to have been taken on either side till October 25, when an inferior mandarin having been again deputed to Whampoa, by the order of the Viceroy, he received possession of the person of the unfortunate sailor, without difficulty or resistance, as the man, upon being demanded by the Hong merchants on board the *Emily*, is understood to have voluntarily surrendered himself into their hands.

¹ P. 311.

He was immediately conveyed to Canton, and placed in confinement, in irons, in a place called the Consohouse, belonging to the Hong merchants. During the two following days the forms of a Chinese trial were gone through in the same place, but the precise nature of the proceedings can only be conjectured, as no foreigner of any description was allowed to be present ; and on the third day, about daybreak, notwithstanding a very general expectation entertained at Canton that his life would be spared, the unfortunate man was brought forth and publicly strangled at the usual place of execution, without the walls of the city. His body was given up to the Americans in the course of the evening, and on the following day the trade was reopened.

The unexpected result appears to have caused great sorrow and indignation among the foreigners generally at Canton, who justly considered the secrecy and unfairness with which the trial was conducted, and the precipitancy with which the sentence was afterwards executed, as equally a violation of the natural principles of justice, as even of the forms of Chinese law, such as it is administered in ordinary cases. The peculiar severity exercised on the present occasion is, however, not difficult to be accounted for. The strong impression which prevails with the Chinese local government of the insubordinate character of foreigners renders it peculiarly disposed to seize any opportunity of inflicting upon them what it conceives to be an example of salutary terror ; and to this it is further goaded on by the general feelings on the subject of the Chinese populace, to whom the foreign sailors are peculiarly obnoxious, and who, on the occasion of the dispute with the English in 1807, actually manifested its feelings by public placards of a very insulting nature, reproaching the government with having made unworthy concessions.

It is unquestionable, therefore, that foreigners in China will always find it difficult to protect the life of any individual who (however innocent of the crime of murder) may be charged with having occasioned in any manner the death of a native ; and that they will have little chance of success unless they were prepared to risk everything in the contest.

The following are the translations, which have been received from China, of the principal official documents which emanated from the local government on the above occasion. They are inserted, however, more for their curiosity than as conveying correct information. With respect to the general accuracy of Chinese documents in which foreigners are concerned, the author is very much inclined to concur in the opinions of Dr. Morrison and Mr. Milne, quoted in p. 222 of this volume.

Paper issued by the Viceroy of Canton on Sunday, October 28, 1821

Yuen, guardian of the prince, and governor-general of Canton and Kwang-se provinces, to the Hong merchants.

It appears in former documents that Ko-leang-she, a boat-woman

belonging to Pan-yu district, received a wound by a jar which caused her to fall into the water and lose her life ; which jar was thrown by a foreigner in Coupland's American ship.

The merchants communicated an order to the chief of the said nation to take the murderer, Francis Terranova, and deliver him up ; this being done, an officer was deputed, with the magistrate of the said district, to summon the relations of the deceased and witnesses, the Hong merchants and the linguists, and to institute a minutely particular and grinding examination ; and it has now been proved that Francis Terranova confessed he threw the jar and wounded Ko-leang-she, who fell into the water and was drowned : this is very clearly and positively ascertained. Next the Provincial Judge was despatched with the Foo, Ting, and Hien magistrates, who tried the case clearly and reported it to me.

These successive steps have been taken, as appears on record ; and the foreign murderer, Francis Terranova, has, according to law, been strangled.

Previously to this, in consequence of the said nation's chief staring about, opposing and lingering, and not delivering up the actual murderer immediately, I communicated with the Hoppo and requested him to order the merchants to command the man to be delivered up ; and I examined the records, and in imitation of an old English case, I directed the whole of the American trade to be stopped.

Since they have now delivered up the foreign murderer, who has been clearly tried and punished, the said chief has on the whole behaved respectfully and submissively ; and it is proper to permit the trade to be again opened, and cargo to be taken up and down, in order to manifest our compassion.

Besides communicating this to the Hoppo, I hereby command the Hong merchants to act in obedience thereto ; and to communicate an order to the American chief, that he may inform the several ships that they may carry on their trade as formerly, and open their hatches, and buy and sell.

And further order the said chief and others, that they ought to know that the laws of the Celestial Empire are explicit : that he who kills a human being must die ; and that through the whole of the Celestial Empire, from East to North and from West to South, an extent of several times ten thousand miles, both with respect to natives and foreigners, in cases of life and death, there is no spot where the forfeiting of life is dispensed with. Since these foreigners come to trade in the interior, they ought to be quiet and observe the laws. Although these ships anchor a long time in the interior, and it is impossible to be sure that these people never wrangle and fight with the natives, yet the said chiefs and captains ought, all of them, and constantly, to caution and command their sailors in the ships that they are not permitted to create disturbances, and proceed to murders, and when disturbances are excited and overt acts committed, the said chief should find out who originated the bloody affray, point out his name,

and deliver him up, that the local magistrates may try him and punish him ; when this is done the reasons and conduct are correct. They must not on any account screen the offender, and make pretexts, and delay giving him up, and bring upon themselves heavy crimes.

The Celestial Empire's kindness and favour, and tenderness to the weak, is rich in an infinite degree ; but the nation's aspect sternly commands respect, and cannot, because people are foreign sailors, extend clemency to them.

Let the Hong merchants explain luminously this official mandate ; and persuade and induce the said foreigners, all of them, to know it, and to be warned by it, and to be thereby filled with reverence and awe, that each may ensure the safety of his own person and family, and not bring himself into sorrow.

A Special Edict—Toau Kwang 1st year 10th moon 3rd day.
(Translated by the Reverend Dr. Morrison.)

Statement to the Emperor, Toau-Kwang, concerning an American sailor, Francis Terranova, executed at Canton, by strangling, on Sunday morning, October 28, 1821, for the alleged crime of causing the death of Ko-leang-she, a Chinese woman who lived in a boat at Whampoa, and sold fruit and liquors to the sailors.

A memorial to His Imperial Majesty concerning the trial and punishment, according to law, of an American sailor, who wounded and caused the death of a native woman.¹ The memorial is respectfully presented to His Imperial hearing.

Wang-yung-jin, the Whampoa magistrate, laid before government the information that, on the 28th day of the 8th moon of this year, a foreigner, in an American ship, wrangled with the native woman, Ko-leang-she, about some fruit, and he threw overboard a jar at her, which wounded her, and caused her to fall overboard and lose her life ; and so on. An Order was immediately issued to the said foreign ship to deliver up the murderer for trial and punishment.

After this, Wilcocks,² the chief of the said country, discovered that the ship was hired to come to Canton, by Too-Leet,³ that she was commanded by Coupland,⁴ and that in her the sailor, Francis Terranova, had thrown the jar at the native woman to buy fruit ; but there was no such thing as wounding ; nor did they know how she fell into the water and lost her life.

He further said, that Francis Terranova was rather seriously sick from melancholy and fear. These communications were made, in

¹ Min-Foo is the expression here used ; the previous documents call the unfortunate woman Tan-Foo, a woman who lives in a boat, and who has not the same consideration in the eyes of the law as those who live on shore and are called Min.

² Mr. Wilcock, American consul at Canton.

³ Mr. Stith, supercargo of the *Emily*.

⁴ Captain of the *Emily*.

behalf of Wilcocks, to government, by Pacqua, the security merchant, and the others.

The committee of head merchants, Howqua, and the rest, also stated that they had found out that Francis Terranova was just put in irons by the captain on board ship.

It was found on examination that when the native woman, Ko-leang-she, was wounded and fell overboard, from a foreigner throwing a jar at her, which caused her to lose her life, her daughter, Ko-a-tow, and a woman, who knows a little of the language of the foreigners, Chin-le-she, were in the boat and saw it with their own eyes ; and cried out, and endeavoured, without effect, to pull her out of the water, by the assistance of a revenue attendant called Ye-sew.

The husband of the deceased, Ko-soo-te, recovered the body, and reported the affair to the local magistrate, who summoned the said nation's chief, and merchants, and captains, to see and to join him to examine the body with his own eyes, and ascertain that it really was from a wound received that the woman fell overboard and was drowned.

The local magistrate above named went in person to the ship, and examined Francis Terranova, but he obstinately persisted in denying the above quoted evidence : this conduct was indeed allowing himself to depend on craft and deceit, and had not the least shadow of reason in it.

Since the said foreign ships anchor long at Canton, wranglings, fightings, and mortal wounds are a common occurrence. And, as the native officers of government do not understand the language of the foreigners, it has always heretofore been the practice to order the chiefs of the respective countries to find out the murderer, and question him fully, and ascertain distinctly the facts, and then deliver him up to government, after which a linguist is summoned, the interrogatories translated, and the evidence written down, and the prosecution conducted to a close. In the present case the name of the foreign murderer, Francis Terranova, was pointed out by the said foreign ship itself ; and it was acknowledged by Francis Terranova himself that the jar thrown was his property ; and, if Francis Terranova was not the actual murderer, why did he become sick from melancholy ? and why, moreover, did the ship captain put him in irons ? In these proceedings and statements there is every species of self-contradiction and incoherency, which all shows the crafty and deceitful disposition of the foreigners. The said chief made evasions, and stared about, and delayed to deliver up the foreign murderer ; and the security merchant and linguist did not examine with strict justice, nor dispute the matter with the foreigners clearly, but precipitately laid before government the absurd glosses and pretexts of the foreigners, which all showed a playing with the business, and an opposition to government. But the affair was that of a foreigner wounding and causing the death of a native ; and the least indulgence could not be shown to false glosses ; therefore the security merchant and the linguist were taken up, and put into the district prison. And a reference was made to the

Hoppo, the whole commerce of the said nation put a stop to, for the time being, till they should deliver up the foreign murderer to be judged and sentenced determined.

After this, Ah-urh-pang-ah, the Hoppo, strictly prohibited any vessel's leaving the port. This being done, Howqua presented a petition from the aforesaid foreign merchants, requesting that an official messenger might go with the Hong merchants to the ship, and examine the foreign merchants, captains, etc., whether they could point out any other person as the actual murderer or not ; and if not, to take Francis Terranova, and bring him to Canton in custody.

This being done, the Kwang-chow-foo, with the Tuh-leang-tung-paoy, the Nan-hae magistrate, and the Whampoa magistrate, were sent to collect and bring before them the relations of the deceased, and witnesses ; and to judge clearly, deliberately, and decide, which proceedings were to pass through the hands of the acting An-cha-size (or provincial judge) who retained the prisoner, and laid the following elucidation before me, your majesty's servant.

Francis Terranova is a sailor on board the ship, under the shipmaster Coupland, which ship the foreign merchant Too-leet hired to come to Canton. On the 28th day of the 8th moon of the first year of Taou-Kwang, at noon, it happened that, at the part of the river where the ship lies, a native woman who sold fruit, Ko-leang-she, with her daughter, Ko-a-tow, were sitting in a small boat and passing the said ship's side. The sailor, Francis Terranova, called to her to come near, and putting fifty cash into a water bucket, let down by a cord to purchase plantains and oranges, Ko-leang-she took the cash and put ten and upwards of plantains and oranges into the bucket, which was drawn up into the ship again. Francis Terranova disliked there being so few, and required more. Ko-leang-she, knowing a little of the foreign dialect, said he must give her more cash and she would give him more fruit. Francis Terranova would not do this, and they wrangled, and Ko-leang-she clamoured with a loud voice, and Francis Terranova, fearing that the ship captain would hear and reprehend him, in a sudden fit of passion seized a jar that was at hand, and threw it down from above, and the corner of the bottom of the jar broke through a bamboo hat which Ko-leang-she had on, and wounded the right side of her head, which caused her to reel and fall over into the water.

Ko-leang-she's daughter cried out to save. It happened that a revenue attendant Ye-sew, appointed to watch the foreign ship, was sitting at his leisure in a boat of a boatwoman, Chin-le-she, and Chin-le-she was sitting at the head of the boat and got a glance of it, and called out, and with Ye-sew endeavoured ineffectually to pull and save the woman. Ko-leang-she's husband was not far off, and when he heard of it he hastened to the spot, and, with Ye-sew, questioned Ko-a-tow and Chin-le-she, and thus knowing the circumstances recovered the body, which was dead. The bamboo cap floated and was immediately taken up, and the jar was found in Ko-leang-she's boat.

The husband of the deceased reported the case to the local magis-

trate, who went in person with the chief, Wilcocks, and the foreign merchant, Too-leet, and Captain Coupland, and examined the wound on the right side of the head of Ko-leang-she ; it was a curved wound, one punto (inch) four-tenths long, and three-tenths broad, and went deep as the bone, which is injured. Undoubtedly, it was the wound which caused her to fall into the water and lose her life. On examining the instrument of the murder, the jar, it filled the rent of the bamboo cap of Ko-leang-she. And this jar was taken, and the said captain and others required to acknowledge that it belonged to their ship ; and they were ordered to deliver up the foreign murderer to be prosecuted.

The foreign merchant, Too-leet, and the captain, Coupland, examined the sailor, Francis Terranova, and he merely said that he gave the jar to the woman to buy fruit, but he would not confess that he wounded her, and caused her to fall into the water.

And neither the said chief, the security merchant, nor the linguist, did any of them make a faithful investigation ; but precipitately presented for the foreigners their absurd statements. Nor did they deliver up the foreign murderer, till I confined the merchant and linguist and stopped the trade : then these foreign merchants petitioned that officers should be sent to take Francis Terranova.

The foreign murderer, Francis Terranova, at first was crafty and dilatory, till he saw the witness Chin-le-she, and the daughter Ko-a-tow, bearing witness against him in the foreign dialect ; then the foreign murderer could no longer oppose any pretext, but confessed freely all the preceding circumstances. And moreover it is authenticated that the said foreign murderer, in open court, struck his breast with his hand, to make a sign of confession that the jar was his property. And more still, it is authenticated that he took the jar in his two hands, and showed the manner in which he threw it down from above. And again, the linguist was ordered to put the interrogatories to him carefully and singly, and he persisted undeviatingly in his confession. In this statement of the case there is no evasion or gloss.

Now, it is written in the law, " When persons outside the pale of (Chinese) civilisation shall commit crimes, they too shall be punished according to law."

Again, it is contained in the law, " Those who fight with each other, and kill a person ; whether with hand or foot, or anything else, or with a sharp metal weapon, shall be strangled, after a period of imprisonment."

And, during the eighth year of Kien-lung's reign, Tsih-land, the governor of Canton, made the following proposal to the emperor, which was approved :

" If cases of murder occur between natives and foreigners, whether from previous conspiracy, wilfully, or fighting affrays, and the case requires the foreigner to be decapitated or strangled, the local magistrates shall, when they examine the body make full and faithful interrogatories, and shall report to the Foo-yuen and governor, who

shall carefully examine the case ; and if the facts are really as stated, they shall order the local officers, and the respective foreign head person, to take the criminal and punish him according to law, and dispense with his being delivered over to imprisonment, and removal for examination in the interior courts. And that at the same time a faithful report be made to the emperor, and a copy of the evidences sent to the appropriate boards in Peking." This is on record.

Now, the American foreigner, Francis Terranova, having, as is well authenticated, freely confessed and been fully convicted of having wrangled with Ko-leang-she about fruit, and of having thrown a jar which wounded her, made her fall into the water, and lose her life ; according to law he must be sentenced to be strangled. The crime and the punishment exactly correspond. I, therefore, forthwith ordered the Kwang-chow-foo, with the Nan-hae magistrate, and the Whampoa magistrate, to join the military officer, the Kwang-chow-hee, and unitedly to summon the linguist, and the chief foreigner ; and on the 3rd day of the 10th moon of the present year, to take the said foreign murderer, Francis Terranova, and according to law strangle him ; to display luminously the laws of the empire.

As to foreigners purchasing eatables ; heretofore government has given them Compradores to do it for them : and therefore, in this case, the woman, Ko-leang-she, going privately to sell fruit, was very improper : but she has been wounded, and lost her life, and therefore it is unnecessary to deliberate about her punishment.

As to Ye-sew, the revenue attendant, who failed to discover the transaction, he ought, for misconduct, to be punished with eighty blows, and dismissed.

As to the said foreign merchant Too-leet, and the ship-master Coupland they did not know till they found it out on inquiry, that the sailor Francis Terranova clandestinely bought fruit ; and although they precipitately reported to government the crafty pretexts of the said foreign murderer, still they took him and put him in irons in the ship, and therefore did not wilfully connive at his conduct, nor screen him. And also, when the local magistrate went on board to institute a trial, the foreign merchants and captains put their hats off, and stood up in attendance on him ; and waited to reply ; and stood to answer. And when a strict stoppage of their trade took place they petitioned that an officer should be sent to the ship to take out the murderer, and bring him to Canton, for judgment, in all of which parts of their conduct they shewed a respectful submission to and dread of the laws ; and therefore it is not necessary to deliberate further about their punishment, nor yet about the security merchant, nor the linguist, who I find did not combine to put a false gloss on the proceedings. The security merchant and the linguist have been liberated ; and the trade of the said nation has been opened, and they are allowed to buy and sell as usual. And an order has been issued not to permit small boats to sell eatables to the foreign ships ; and thereby to cut off the occasion of bloody broils.

And I have ordered the Hong merchant Howqua to promulge an Edict to the said chief, telling him, that he ought to know that the laws of the Celestial Empire are to be respected and feared ; that foreigners, when they enter the country, should be quiet and observe the laws ; and that the said chief and captains must constantly caution their sailors not to make a disturbance and commit murders ; and if it does happen that disturbances are fomented and deeds committed, that they should find out the man who originated the affray, and tell his name, and deliver him up, and wait for the local magistrate to judge and punish him ; and must not screen him and bring heavy guilt upon themselves ; and that thus they will act becoming the tenderness and gracious kindness with which the Celestial Empire treats them.

Besides sending a copy of the confession to the board at Pekin, I lay this statement before His Imperial Majesty for his sacred inspection, and prostrate beg that he will look at it.

And again, since I act as Foo-quen, it is unnecessary for me to make a communication to that office.

A most respectful Memorial—Taou Kwang, 1st year, 10th moon. (Translated by the Reverend Dr. Morrison.)

The author cannot conclude this article without subjoining, as a counterpart to the foregoing statement, the substance of an interesting narrative of the circumstances, which appeared in *The Times* newspaper of May 6, and which, with some trifling exceptions, corresponds with the information the author has received on the subject in private letters.

“ A seaman, a native of Italy, acting second officer on board an American vessel,¹ observing a woman hand some samsoo (spirits) into one of the ports of the ship, threw a small stone jar at her, which struck her on one of the temples. The woman fell over-board and immediately sunk, either because stunned by the blow, or in consequence of the pin, on which the oar was fastened, breaking, on her pulling away from the ship : both accounts are given. She was found next morning at some distance from the ship, with a small wound, as the Chinese asserted, on one of the temples, but stated by the Americans to have been made by the Chinese after she was found drowned, but without any injury to the skull. The family to which the woman belonged threatened, next morning, to represent the illegal murder to the Chinese authorities, and to demand the murderer to be given up for trial, but at the same time gave them to understand, that all would be hushed over if the Americans would give them three or four hundred dollars. This is stated to have been refused, and, on some of the inferior mandarins getting notice of it, the demand was increased to as many thousands. The Americans refusing to pay this *douceur* or bribe, the mandarins at Canton were informed of it, and immediately

¹ The author's private accounts do not mention that this sailor acted as an officer, and he is informed that he was not taken out of the American vessel by Chinese soldiers, but surrendered himself to the Hong merchants, to all appearance, voluntarily. (Staunton.)

demanding the man for trial. All trade with the American ships in Canton river was immediately stopped.

“The Americans at first steadily refused to give the man up, and the Chinese came to the resolution of trying the man on board his own ship, to which the Americans consented. During the mock trial, not one witness was examined for the defendant, and the Chinese also refused admittance to Dr. Morrison, who volunteered his services as interpreter at the trial. The man of course was found guilty by such a tribunal, and it was now more insisted on that he should be given up. It was likewise demanded that he should be confined in irons, which was complied with. About a week afterwards the Americans began to waver, and at last it was agreed on that he should be given up for a second trial at Canton, which it was said would be publicly and fairly conducted, with examination of witnesses for and against the prisoner.

“The man was accordingly taken out of the ship by a strong party of Chinese soldiers, and conveyed to Canton, where a few days afterwards the trial took place. During the mock trial, not an American or any person on the man's part was present. A body of captains and officers of the Hon. Company's ships went to the Conso or court-house, and demanded admittance, in order to see justice done to the unfortunate man, but they were refused it, on the plea that as the prisoner was an American it was no affair of theirs as Englishmen.

“It is understood from some of the Chinese who were present, that after a few questions put to the poor man, and the examination of two witnesses, they produced a paper, which they advised him to sign by imprinting the mark of his open hand upon it with red ink. They represented to him that it was merely a statement of the trial, which must be sent to Peking for inspection, before they could proceed further; and that it was likely, on its being sent, and an answer returned, he would be immediately acquitted.

“The unfortunate man, surrounded with strangers, without any other advice, and put off his guard by the fair promises of a security merchant of high rank, and two China-street merchants who acted as interpreters, and who pretended to be his friends, imprinted his hand on the paper. All further proceedings were immediately stopped. It was a confession of his guilt, which was immediately forwarded to Peking, and completely screened the viceroy and mandarins in the event of any disturbance with the American government. The poor man, still ignorant of his fate, was taken back to prison; and, according to the Chinese custom, his irons were taken off, and he had plenty to eat and drink.

“On the fourth or fifth day after the trial, about four o'clock in the morning, the security and China-street merchants, who attended him on his trial, visited him and told him that they had heard from Peking, and that it was necessary he should go into the city, in order to hear the contents of the dispatches, not alluding in the most distant way to their purport. The unfortunate man, in high hopes of being

soon liberated, cheerfully obeyed. He was taken into the heart of the city in a sedan-chair, attended by the merchants, and put into a room, where he was told he must remain a short time. Soon after, some Chinese soldiers entered and took him out at another door ; and the first intimation he had of his cruel fate, was the executioner and implements of death before him, and the heads of decapitated Chinese hung round a kind of square crowded with spectators. He uttered a yell of despair, raised his hands to Heaven, and was understood to protest his innocence, and to implore the sight of an European or American.

“ The executioner paid no attention to his cries, but immediately proceeded to strangle him according to the usual horrid way directed by the Chinese law.

“ Ropes were first tied round his ancles and wrists, and then, gradually round the more vital and sensible parts ; and finally round the neck, until he expired by a languishing and cruel death.”¹

APPENDIX VI

THE TRIAL OF THE PIRATES OF THE *NAVIGATEUR* IN 1829

The foreigners in Canton had an opportunity of seeing a public execution in 1829, the circumstances of which will serve to exemplify the procedure of criminal justice in China. A French vessel called the *Navigateur* was wrecked in the preceding year on the coast of Cochinchina, but the crew saved. The captain hired a Chinese junk to convey himself with his property and thirteen of the crew to Macao. When the junk arrived off the coast of China, the Chinese sailors of the junk rose upon the foreigners and murdered them all except one man, Francisco Mangiapan, an Italian, who jumped into the sea, where he was shortly picked up by a Chinese boat and carried to Macao, where he arrived on September 4. The Procurador of Macao, when he learned of the story, applied to the tsotang or Chinese magistrate,² who reported it to the heen magistrate of Heangshan, who gave notice to the governors of Canton and the adjoining province, and at the same time offered a reward of 200 dollars for the heads of the murderers or 50 dollars for each to any who might give information which led to their detection. A monthly allowance of three taels

¹ The author is inclined to believe that the picture here drawn of the sufferings of a criminal under this mode of execution is considerably overdrawn, and that he is merely confined in the first instance, and that the actual execution by strangling is as expeditious, and as limited in point of suffering, as our mode of executing criminals, by hanging, in England. (Staunton.)

Miscellaneous Notices relating to China, etc., pp. 407-432.

² *Canton Register*, January 17, 1829.

was granted also to the Italian, while the proceedings should last, which he received for several months, and subsequently a present of 100 dollars to enable him to buy clothes. The junk belonged to Fuhkeen province, whither she proceeded after the massacre of the Frenchmen, but was wrecked on the coast. On September 27, the tsotang gave notice that he had received a dispatch from the judge of Canton, reporting that he had received intelligence on the 16th from a magistrate of Amoy, that eleven of the crew of the junk had been apprehended, who confessed to the murder. Others were subsequently caught and the whole were brought to Canton, tried and condemned. Notice was given to the foreigners that the government would confront the murderers with Francisco in the hong merchants' hall on January 24 following, when the foreigners might be present. The following account of the ceremony and the subsequent execution of the condemned prisoners is taken from the *Canton Register* of February 2, 1829.

"The ceremony was announced for the 23rd instant, but in consequence of that day being the anniversary of the birth of the Kwangchow foo's mother, the trial did not take place till the following day.

"In the morning every preparation was seemingly made for bringing out the prisoners, and at an early hour the hall was taken possession of by a military guard, who secured the street in front of the gate from the obstruction of any mob, whilst a proclamation was affixed to the gate directing the police to use their authority, should any be so imprudent as to oppose its command.

"As the magistrate was expected about noon, most of the foreigners in Canton were by that time assembled at the Consoo. Between 11 and 12 the prisoners began to arrive, being conveyed in bamboo cages of about three feet long, two wide, and three deep, in which the prisoner was obliged to sit in a doubled posture, and the only relief he could possibly receive was from a round hole at the top sufficient to admit of the unfortunate putting out his head—but which few of them availed of—perhaps shunning the gaze of the spectators, and ashamed of the crime they had perpetrated. They had light chains around their necks, legs, and wrists, and presented a most degrading spectacle of human misery. On each cage was written the name of its inmate, and the nature of the sentence which he was doomed to suffer.

"Attention was soon attracted to one of the prisoners, an interesting looking man about fifty years of age, making an attempt to address the strangers, and by directing his finger to his mouth and ears, was evidently desirous of an interpreter. He was soon attended to by a gentleman whose knowledge of the Chinese language enabled him to interrogate as to what he was anxious to communicate, but he could only say intelligibly that he was falsely accused, and that he did not understand those dialects which were spoken to him—he speaking in that peculiar to the Fuhkeen province, which those around him knew little of. Various opinions were entertained as to the condition of the

man, some asserting that he was the captain or supercargo of the junk, and others that he was a passenger. His countenance discovered him to be a man superior to the rest of the crew, and it is supposed he was a part-owner of the vessel. The name of Tsae Kungchaou appeared on the cage, and the words 'chan fan,' by interpretation 'a criminal to be decapitated.' It appeared that he had been maliciously accused by his fellow-prisoners of having killed three Frenchmen, and in the extreme of torture which he had undergone, had confessed to the guilt which had been charged to him; but which he now recanted and asserted his innocence.

"The hong merchants had requested that no sailors might be admitted into the hall, under the apprehension that they might be led to indulge in a spirit of revenge, and in the height of indignation retaliate upon the prisoners on the spot; and it was very happily suggested, to contradict so mistaken a notion: a gentleman proposed that it should be disavowed before the magistrate, and the amiable quality of mercy opposed to it, as being the real disposition of foreigners, who were inclined to clemency, and would rejoice if any circumstance could be discovered whereby the fate of the unhappy culprits might be mitigated.

"About 2 o'clock, Hoo, the Kwangchow foo, and the other officers arrived, and after he had taken his seat, the gentleman already alluded to appeared before the bar, respectfully begging permission to say a few words on the part of the foreigners present, and proceeded to express the sentiments which had been delivered. The magistrate seemed gratified with the feelings that directed this appeal, and very mildly replied that the court was proceeding in the case under the special command of his imperial majesty, and that every care would be taken that no false accusation should take effect. The opening of the court was made under the usual cries of the lictors, and since the public proceeding was as much to satisfy the wishes of the foreigners, as to serve for the purpose of public justice, it is to be regretted that the intrusion of the lowest order of attendants of the Chinese should have been permitted to the great inconvenience of all, even of the magistrates themselves. The prisoners were brought up in threes and fives successively and made to kneel whilst confronted with Francisco, who was attended by a Portuguese interpreter; the most of them he very readily recognised, showing only a momentary hesitation of recollection as to the persons of one or two—and as they were identified, the magistrate put a red mark against their names. One of the prisoners was described as not having taken any active part in the massacre.

"Francisco had frequently spoken of one man whom he esteemed as his deliverer, from the circumstance of his having intimated to him the design of the crew towards the French passengers, and expressed his intention of pleading for his pardon, describing him as having a mark on his face and forehead by which he should know him. Among the prisoners that were brought up was Tsae Kungchaou the man who had complained that he was doomed to death whilst conscious of his

own innocence, and was identified by all who were present by the above marks, as the friend of Francisco. On his approaching Francisco, they immediately recognised each other, and the interview was particularly interesting and affecting even to the by-standers. The gratitude of Francisco was evident to all, and the joy of the prisoner at finding himself recognised, and likely to be acquitted by the interference of his friend was very conspicuous on a countenance previously depressed with the most anxious doubts and fears. The parties were immediately in each other's arms, and Francisco saluted the man to whom he was indebted for his life, according to the usage of his own country, and with all the lively emotion for which his nation is famed. The judge seemed to partake of the general satisfaction, and instead of affixing a red mark to his name, which he had done in the instance of all his fellow-prisoners, inserted a note, which was supposed to be in his favour, but was obliged to remand him to his cage to be returned to his cell for confinement. Francisco, having satisfied the judge by the reply to his inquiries that he was the same person whose testimony had been received at Macao, was informed that some of the property that was taken from him and his shipmates was recovered and would be restored to him ; but which the man very honestly confessed he had no claim to. This property, we believe, is still on board some boats in the river.

“About thirty-five malefactors were produced, although the number condemned under the melancholy affair was forty-seven. Two out of this number had died, and it was not thought requisite to bring the remainder. It is supposed that the sentence of Tsae Kungchaou will be commuted to banishment, for although he may be easily acquitted of murder, it cannot perhaps be so satisfactorily ascertained that he was not a participator in the plunder as to entitle him to a general pardon. It has been suggested to us by a Chinese that a petition from Francisco to the viceroy in behalf of his friend may be attended to, and probably save him from banishment.

“Although the accommodations for the seat of justice were but poorly arranged, yet the high respectability of the magistrate and his associates combined everything that could inspire respect ; but the throng of low dirty attendants which allowed only of a crowded avenue for the culprits to approach the tribunal, detracted much from the appearance of judicial solemnity. Everybody was struck with the pleasing and gentlemanly deportment of the Kwangchow foo. So predominant is compassion in well regulated minds, that the malignity of the crime of the prisoners was for a time obliterated, in the pitiable condition to which they were reduced ; all of them sickly and emaciated, many bearing the marks and laboring under the effects of torture to which they had been subjected, and so reduced as to be absolutely in many cases forced into the act of genuflexion, which attitude of respect they were unable of themselves to fall into, whilst the hurried and inhuman manner of thrusting and dragging them to and from the bar, like so many dogs, conveyed a strong picture of the extreme misery

that inmates of a Chinese jail must endure from the unfeeling lictors and keepers who have charge of them.

“ The vengeance of the law on the unfortunate seventeen culprits, who were selected as being the most prominent leaders in the horrid massacre, was inflicted in the morning of the 30th ultimo.

“ It had been intimated that it was to have taken place on the 28th, but from some necessary legal forms was delayed till that day. Notice was given to the foreigners that the ceremony would commence early in the day, and several persons were assembled by 8 o'clock. The place appointed (the one allotted for the execution of criminals) was a spot formed into a yard by its enclosure of a temporary railing at one end of a street, with a dead wall on one side and the backs of houses on the other. An open room at the opposite entrance, for the officers of justice, presented a space of about two hundred feet long and thirty wide.

“ The avenue to the place from the water-side was lined with soldiers and police, armed principally with lances, and not the least interruption was experienced to its approach. Nobody was present but the foreigners and the various attendants upon the officers presiding on the occasion. Very little ceremonial preparation was apparent, excepting that of two crosses erected for the unhappy victims that were to undergo the more dreadful operation of the law, with the executioner's instruments placed against the wall, and new tubs to receive the heads, which are to be transported to the native place of the offenders. One cross was subsequently removed. The swords were of heavy blades about three feet long and two inches deep, and remarkably sharp ; one of them was with all possible indifference brought and given into the hands of the spectators to examine.

“ About 10 o'clock the nganchasze (chief judge), Kwangchow foo, Nanhar heen, Pwanyu heen (magistrates), and Tse-hee and Chong hee (military mandarins), arrived at the place of execution, and took their seats at the farthest extremity ; a few minutes afterwards the culprits were brought in baskets, each having his name and sentence written on a long slip of wood affixed to his back, and placed in twos and threes upon their knees, about eight feet apart, and commencing within ten or twelve from where the strangers were standing in a place that was railed off, and where they were carefully protected from any mob or molestation by a party of Kwang hee's guard. It was supposed by the foreigners that the malefactors were brought so close to their view for the purpose of being shown more particularly to Francisco, who was present, but to the astonishment of all and with much violation of feeling they were decapitated on the spot. Previous to this dreadful ceremony, a messenger had been dispatched to inquire if the Frenchman was in attendance. Each culprit had a person to hold him in a fixed posture, by the position of cords around the arms, and about six executioners, at a signal given by the officer commanding the troops, gave the fatal stroke, afterwards continuing with hasty dispatch the decapitation of the remainder. The prisoners were remarkably well clothed,

presenting a decent and cleanly appearance, so opposite to their condition when brought in cages to the Consoo House. Some few lamentable expressions escaped from one of the unfortunate men, and another showed some feelings of interest by moving his head around, but with these exceptions the most perfect resignation seemed to prevail. The one affixed to the cross was in a lateral line from the spectators, about eight feet distant, and could not be so easily distinguished ; but although the mode of punishment as described must appear most shocking, we apprehend that humanity is usually shown to soften the severity of the law's decree, and in the present instance life seemed to have been instantly extinguished by a thrust from a poignard into the heart : after a hasty cut over the forehead and on each arm, not a moan was heard !

“ The cool indifference of the executioners, rather approaching to exultation at the opportunity of exerting their skill, and indulging their cupidity of gain, vociferation with impudent gestures, requests for cumshaws from the foreigners, was of a nature sadly disgusting, and altogether presented a scene of butchery rather than the infliction of the sentence of the law. Their dexterity was very great, for with one blow the head was severed instantly from the body, excepting in two cases which were completed with a knife by a person watching the failure of the first executioner. About the wall was a railed press containing about a hundred skulls, some of them in small cages.

“ Two men dressed as mountebanks in crimson satin trimmed with green and long erect feathers on each side of the head made their appearance, who, we understood, were the official executioners, but they took no active part in the proceedings. One remarkable circumstance, as differing from the general idea of the Chinese etiquette and respect, was that the culprits were all placed with their faces towards the foreigners whilst the mandarins were behind them.

“ We cannot conclude the melancholy narration without noticing the strong expressions of praise that were due to the Chinese government, whose vigilance to overtake the offenders in an affair so revolting to humanity has been most conspicuous from the moment the circumstance was known, nor can we refrain from mentioning with commendation the zeal of Mr. Veiga, the late Procurador of Macao, whose attention on the occasion was most prompt and unremitting, and must be considered as having greatly contributed to the ends of justice. At his suggestion it was that the Chinese passengers who landed from the junk before the massacre were sought out by the mandarins to give information as to her name and other particulars, without which detection must have been a matter of much greater difficulty than it actually proved.”

In the same journal of April 18, the following sequel to the story is found. “ It will be seen by the advertisement of the sale in to-day's number that the recovered property from the junk has been restored to the French authority here, which is consistent with principles of law and justice ; and although it is very deficient of the cargo originally

laded on board the junk by the French captain, the highest praise is due to the local officers for the promptitude in seizing what did remain.

“ Together with the returned articles, the French consul has received various sums amounting in all to upwards of three thousand dollars, stated to be the proceeds of the property of the unhappy malefactors, which had been confiscated and sold, the amount arising from each being kept separate and labelled with his name. It is to be lamented that these unfortunate men should have entailed so much misery on their relatives and friends, who could in no wise have been participators in their guilt ; for we are told that several of their wives have already committed suicide, to obviate the severity of the mandarins, which they were in dread of, and even their relatives have sustained a loss of property calculated at about 150,000 dollars.

“ The cupidity of these officers is so great that they avail themselves of the most trivial circumstances to implicate every person from whom they think there is a chance of extracting any money. The least connexion that they can trace to have existed with the culprits is sufficient to justify their pretensions, and a mere recommendation that may on any occasion have been given, involves the parties in suspicion, and often in ruin.”

The following are extracts from the declaration of Francisco touching the events which led to the murder and his escape, and a deposition by Tsae Kungchaou, the old Chinese who was pardoned. The latter document is not to be relied on, for it is evident that the deponent was more desirous of making it appear that the whole merit of the detection of the offenders was due to him, than to tell the truth. He owns in it, that thirteen only of the men apprehended (meaning also apparently, executed) were really murderers, and that six were bought to be substitutes for real offenders. A note by the reporter adds : “ It is scarcely credible to those who know little of China, that substitutes for murderers should be procurable by pecuniary bribes. But there is not a doubt of the fact.” Another scarcely credible, but no less certain fact has been exemplified in the horrid case referred to above—a petty cannibalism. It is falsely believed that the various parts of the human body have great efficacy in medicine, and that the gall of a human being increases human courage. Therefore the gall of human beings is in great request among cowards. The custom is to steep one or two hundred grains of rice in the gall-bladder, and when dry to eat ten or twenty in a day. The executioner who decapitated ten thousand men, showed to the Europeans on the late occasion the gall-bladder of Wookwah, which he extracted after having cut the murderer to pieces. He had grains of rice steeped in the gall and ate of them daily. The following is the extract from the declaration of the French sailor Mangiapan.

“ I left Bordeaux on the 15th of May 1827, in the French ship *Navigateur*, Captain J. S. Romain, bound to Manila. In October we put into Turon in consequence of having received some damage ; and as it was not possible to repair our vessel, she was abandoned and sold to the

Cochinchinese government. On the 13th or 14th of July we embarked in a Chinese junk which Captain Romain had chartered to take him to Macao, with the rest of the crew and a passenger, in all fourteen persons, as well as part of the *Navigateur's* cargo, which consisted of wines, liqueurs, silks, hats, clothes, treasure, etc. (about 410 to 415 packages). We sailed from Turon on the 15th, and a few days after we began to experience all manner of vexations, which increased as we approached our destination ; but the hope of soon parting with our disagreeable companions made us bear them with patience. On the 30th or 31st July an old Chinese who appeared to be the pilot of the junk, tried by every possible means to make Captain Romain understand that he ought to be upon his guard, being apprehensive that we should be maltreated. The same day another Chinese, who paid us some attention, also tried to convey the same impression to us, and even that our destruction was contemplated. But having much difficulty in understanding what was meant, and the conduct of the Chinese crew being always nearly the same, we were in hopes that these suspicions were ill-founded, or that the fear of the crime being discovered would prevent its commission. On the 3rd of August, being eight or nine leagues from Macao, in sight of the Ladrone islands, when twelve Chinese passengers landed about 1 P.M., Captain Romain wished to send on shore at the same time four sailors who were ill of a fever when they embarked, and whom the fatigue of the voyage had rendered extremely unwell, and also some more of the crew. The Chinese captain, however, dissuaded him from this, giving him to understand that he would get near Macao during the night, and anchor near the town, and that it would be very easy for him to procure what boats he might require to land his crew, as well as any part he might wish of the goods that were at hand. Captain Romain, however, confiding little in this proposal, persisted in wishing to land a part of his people, and to leave on board only three or four men to take care of the goods ; but the notice which we had received respecting the bad intention of the Chinese crew, inspired us with but too just apprehensions, that those who remained on board the junk would lose their lives ; we refused to obey the captain's orders, and even to cast lots who should remain behind, wishing that all should land or remain together on board ; and unfortunately we took this last resolution. Next day, August 4th, having kept watch till 2 A.M., I went to bed in the cabin upon the poop where were the captain and other passengers. Between 4 and 5, I was awakened by the cries of my comrades, who were attacked by a part of the Chinese crew, who had killed one of our men then upon the deck, and wounded another. In an instant about sixty Chinese were opposed to the few of us who were able to assemble upon the poop, where we could make but a feeble resistance, having few arms, and being surrounded by so great a number of Chinese armed with lances and long bamboos, with which they tried to knock us down, whilst others from below removed the poop deck under our feet, that they might break our legs and kill us the more easily. After firing

some pistol shots, the chief mate and two sailors were killed, Mr. C—— was knocked down mortally wounded, and Captain Romain, under whose feet they had succeeded in breaking open the poop deck, was seized by the legs, and dragged below ; his cries made us suppose that they murdered him in a shocking manner. The few of us who were still capable of resistance, seeing our officers and messmates cruelly massacred, and having no longer any hopes of saving our lives, resolved to rush upon the Chinese, in order to put an end to our sufferings and try to make them pay dear for the existence of which they wished to deprive us. Having executed this project, I succeeded in disengaging myself, and leaped into the sea, and an instant after I saw Etienne do the same. Having approached him, I saw him all covered with blood, being severely wounded in the head and neck ; more fortunate than he, I had only received some severe bruises. The junk continuing her course was in an instant far away from us, and being upwards of two leagues from the shore, it is probable that the villains who had just committed so atrocious a crime, believed it impossible for us to escape destruction, and that their crime not being discovered would remain unpunished. Fortunately their boats were too much encumbered to be put into the water, or they might have pursued and drowned us. We were about an hour striving with the waves when a small Chinese vessel passed us, and we succeeded in placing ourselves upon her rudder, but the crew made signs for us to be off, threatening to bamboo us if we did not let go our hold immediately ; and absolutely refusing to let us stay or to receive us on board, they threw out a plank at last to assist in keeping us afloat. I laid hold of it immediately, and my comrade did the same, but he was not able to hold out long, his strength being exhausted by the enormous loss of blood which continued to flow from his wounds. Wearied with the motion of the plank he soon let go his hold, and bidding me adieu he disappeared. After being in the water about two hours, a second vessel passed and I succeeded in getting to her, and after some entreaty, was received on board. They were humane enough to throw me a rope, and haul me out of the sea. When I had recovered a little, I gave them five dollars which I had preserved in a handkerchief round my neck ; and tried to make them understand that I belonged to Macao, from whence I set out in the morning with three friends, to amuse ourselves in fishing, and that unfortunately the boat capsizing my companions were drowned. Having given me some clothes and a little food, they called a fisherman, to whom after some discussion they gave four dollars for conveying me to Macao, and gave me back the remaining dollar. About midnight of the 4th I was put on shore, and the boat went off immediately. Having proceeded along the Praya Grande, I came to the guard-house, and after putting a few questions to the sentinel, I lay down close by, and fell asleep. At daylight, not knowing where to go, I proceeded toward the Senate Square, and meeting a Portuguese, requested him to direct me to the house of the French missionaries. My strange

language and Chinese dress induced him to put some questions to me, and acquainting him with what had happened, I was conducted by him to the house of the dezembargador, where I made my deposition."

Deposition of Tsae Kungchaou.—On March 7 the circumstances which took place on board the *Navigateur* were deposed by this fortunate man, as he now may be called, at Macao, whither he went to see the English and other gentlemen who had subscribed the sum of fifteen hundred dollars for him and the French sailor who was saved.

"He describes himself as a native of Tungngan heen, in the district commonly called Chinchew (Tseuenchow) in the province of Fuhkeen. He had been in the army twenty-four years, and once was a petty officer, although he is unable to read and write. His family consists of a wife, two daughters, and two sons. The eldest son, about thirty years of age, is a profligate man, addicted to opium-smoking and kindred vices. He left home and was supposed to be at Singapore. On the 22nd of March 1826 the father sailed from Chinchew with a design of going to Singapore in search of his son, to bring him home again. A gale of wind however drove the vessel into one of the ports of Cochinchina. Some time in June, application was made by the French captain through a Fuhkeen broker, named Yang Chihhea, for a passage to Macao in a Fuhkeen junk. He was to give three dollars for each package or case, and the thirteen passengers were to go free. This being all agreed upon, one of the two sailing captains of the junk, named Keangshih, wanted the captain to advance 450 dollars to be deducted when they arrived at Macao. The French captain however refused. The other Chinese captain named Wookwan was also in want of money, and conferred with Keangshih whether to give them a passage or not. Keangshih left it to Wookwan to do as he pleased. Thus the matter rested till the 17th of July (as the deponent stated from memory), when the French captain put his things on board and his people embarked. On the 18th the junk sailed from Cochinchina. And at this early period Wookwan had formed the plot to murder the foreigners and seize their property. As soon as the deponent heard it, he made signs with his hands to the French captain of an intention to murder him. But he did not believe it, and treated it lightly, saying as the deponent understood him, 'I have firearms, for every attack he makes, I have means of repelling him—what can he do to me?' The deponent also dissuaded Wookwan from his purpose, telling him that the foreigners had firearms, and it would be impossible for him to succeed.

"On the 27th of July, as the French captain was sitting on the water reservoir, Wookwan engaged four men with hatchets concealed in their sleeves to begin the attack. But the captain perceived it, and ever after avoided those men, and would not sleep near them, but moved to the deponent's place of sleep. On the evening of the 29th it was again intended to murder the captain, but on seeing him armed the people were afraid to attack him. On the 31st of July the hills of

Macao were seen, and as the passage was not known, fishing boats were hailed. Three of them came and talked about the price of piloting. They asked thirteen dollars each, making thirty-nine in all. The French captain promised but thirty dollars, and eventually retained only one, to whom he was to give ten dollars. In the evening of August 3rd the junk arrived at the entrance to Macao, and twelve Fuhkeen passengers went on shore. Wookwan then called the foreigners to take a boat and go on shore. Seven of them wished to go, and the deponent tried to induce them to go. But the captain hearing that they were so near Macao, thought whether they went or not that night, was of no consequence.

“Afterwards at the 5th watch (about 4 o'clock in the morning), two Chinese, Lin Chetung and Pookeang, with sticks or clubs beat to death five foreigners, who were down below to watch the property. Lin Chetung killed three, and Pookeang killed two. The eight foreigners on deck were not aware of what happened when these two murderers came on deck, to search for the remaining eight and murder them also. But the foreigners awoke and were ready to defend themselves. The deponent sought for weapons to deliver secretly to the foreigners, to enable them to resist their enemies; the French captain at this time fired and wounded two of the Chinese; one mortally who died; the other survived. The powder being expended (and the last shot having burst the pistol and shattered the captain's hand) all the crew of the junk set upon the foreigners, with long spears.

“After this a foreigner (Francisco) jumped overboard into the sea. Wookwan immediately called out to pursue him with a boat. The deponent hearing this contrived to conceal the scull, which being done prevented the foreigners being pursued. At daylight, the combat was renewed. There were three Chinese, Chang Wooteaou, Tsangleen, and Lintan, who pursued the captain, striking at him to kill him; they also pressed upon the mate and murdered him. There was a purser, who not being dead, knelt and implored them not to kill him, but to throw him into the sea. While in this position, a Chinese came suddenly behind, cut him down with a hatchet, and pushed him overboard. There was also a young foreigner about eighteen years of age, who was cut down and thrown overboard. Twelve foreigners in all were murdered. After the bodies were thrown into the sea, the chests and cases were searched. Four thousand and three hundred dollars were found. Eighteen small gold coins were found in the mate's chest. The deponent did not regard how they distributed this money.

“During the night of August 4th, the deponent dreamed that the twelve deceased persons knelt before him and implored him to give information against the murderers. And they pointed particularly to a small box that he might notice it. After he awoke at daylight, he went to look at this box; and on opening it saw thirty foreign papers, and three papers with Chinese characters (Cochinchina documents). These he secreted about his person. On the 9th of August the junk

anchored at Heamun (Amoy). Wookwan then told those who had no share in the affair that they might go on shore, in small boats to be hired. Then Wookwan and those who entered into his plot, fifty-four in number, consulted about getting the junk under weigh and proceeding to Teentsin to sell the goods. But suddenly, without wind, the junk was dismasted. Wookwan then engaged small boats, to transfer the goods to his own house. On the 11th of August the deponent went with the Fuhkeen captain Keangshih, the mate Lin Heangsin, the tingtow Ye Tingshing, Ying Fookeang, etc., to obtain a permit to repair the junk. The deponent's real intention was to entice them before government that he might give information of the murders they had committed for the sake of gain.

"The civilians at Amoy, on first receiving the petition attended to it ; but on the 30th of August they all declined interfering with it. On the 26th of August the deponent presented a petition to the magistrates of Amoy, and delivered the papers as proof of what he said. But they affirmed that I presented a false accusation, and said I wished to extort money from the owners of the junk. They likewise remarked that nobody understood the papers with foreign letters on them, and that the complaint should not be admitted. They forthwith inflicted eighty slaps on the deponent's face, and thrust him out.

"On the 28th of August, the deponent presented a petition to the taoutae of Heamun (Amoy), against the fifty-four persons who had plotted murder for the sake of gain. Although the petition was received no answer was given ; till on the 1st of September an official despatch arrived from the governor of Canton to that of Fuhkeen. Then the taoutae issued warrants to take up the accused. And he obtained thirteen who were really murderers, and six who were bought to be substitutes for murderers. On the 11th of September forty-two persons were taken into custody and forwarded to the metropolitan city Foochow foo."

There still remain to this day some five or six thousand dollars arising from the sale of the property of the criminals' families in the hands of the Fuhkeen magistrates, which ought to be paid to the foreigners to be distributed amongst the families of the murdered sailors. The French Consul has applied repeatedly for it to the governor, who desires it to be paid to him, but it is never forthcoming, nor will be perhaps unless a French vessel of war comes to demand it.¹

APPENDIX VII

THE CASE OF MR. KEATING, 1835

Following the abolition of the East India Company's monopoly of the China trade in 1833, Superintendents of

¹ *The Chinese Repository*, iv. pp. 371-382.

Trade were appointed. Their powers were at first obscure, and a number of merchants declined to recognise their civil jurisdiction. Among them was Mr. Keating, who owed money to Messrs. Turner & Co. and to Mr. John Smith. The difficulties resulting from this insufficient definition of the authority of the Superintendents of Trade plainly appear from the following correspondence. In an attempt to bring the case within his jurisdiction, the Chief Superintendent of Trade had paid the debt himself, and had then attempted to recover it from Mr. Keating, as a Crown debt.

Sir G. B. Robinson to Viscount Palmerston (received January 28, 1836)

Macao, July 1, 1835.

MY LORD,—I have the honour to transmit the accompanying papers, and respectfully to recommend them to your Lordship's earnest attention.¹ Charged with the superintendence of this great commerce, to be carried on under an entirely altered state of circumstances, we have considered it incumbent upon us, not to shrink from some responsibility in the early and firm establishment of the position, that the safe pursuit of trade in this part of the world (so remote from any means of judicial intervention) rests upon some surer basis than the constant existence of dispassionate fairness, upon the part of every person from whom money may be claimed.

Your Lordship will permit me to remark, that almost all the commercial operations of British subjects resorting to this country, will necessarily be mixed up with extensive transactions with native dealers. In that quarter, too, then very mischievous results could not fail to ensue if an idea were to get abroad, that in the actual state of things there were no certain means at hand to constrain an unwilling party either to submit a commercial dispute to equitable means of inquiry and adjustment upon the spot, or to furnish reasonable security that the matter should be subjected to adjudication in another place. If such an impression be permitted to obtain, I should be wrong to refrain from declaring to your Lordship my own strong opinion (formed from actual observation of events passing, and likely to pass, in these early stages of the relaxed system) that there would be much reason to apprehend a serious shock to the vast confidence which has hitherto been reposed in the faith and honour of the British trader. And upon the maintenance of that confidence the very existence of this commerce

¹ Foreign Office, February 1840. These papers relate to a claim of Messrs. Turner & Co., upon Mr. Keating, for a sum of 300 dollars, a statement of which is given in Lord Palmerston's despatch to Captain Elliot of November 8, 1836. The case is only interesting as showing the necessity there is for the Superintendents being armed with efficient powers to control British subjects in their intercourse and dealings with each other.

may be thought to depend ; for if the native merchant be brought to think that the justice and fairness of the foreigner had failed, it is too probable he would also feel, that all had passed away upon which he could place any dependence. From his own Government he has little to look for, but general indifference, or perhaps exaction, whenever any pretext presents itself for interference in his concerns.

In the Act of Parliament to regulate the trade to India and China, it is, amongst other things, enacted, " That it shall and may be lawful for His Majesty, by such an Order as to His Majesty in Council shall appear expedient and salutary, to give to the Superintendent in the said Act mentioned, or any of them, powers and authorities over and in respect of the trade and commerce, and for the direction of His Majesty's subjects within the dominions of the emperor of China." In the first Order passed by His Majesty in Council on the 9th December, 1833, it was thereupon ordered, " that the Superintendents should be clothed for these purposes with all the powers and authorities heretofore vested in the Supercargoes of the East India Company, save so far as the same were repealed or abrogated by the Act of Parliament." In the same Order it is then set forth, " that all the regulations which were in force on the 21st April, 1834, were thereby confirmed "; and it was further directed, " that they should be compiled and published."

Now, my Lord, it is respectfully submitted that there were no regulations in existence of the nature contemplated in that Order in Council ; the Supercargoes had been unaccustomed to interfere in commercial disputes between the very few private traders here ; and whenever affairs involving either political or commercial difficulty with the Chinese presented themselves, they possessed abundant means of doing as much as was needful. No English subject was here without a licence from the Company, and the Committee, in any case of emergency, had it in their power to apprise the Chinese authorities, that the licence had been suspended, and that they would in no respect interfere for the adjustment of any debts the parties complained of might contract, subsequently to the date of that notice. The British shipping which resorted to China was under the complete control of the Committee ; they either belonged to the Company, or were chartered by it ; and the country ships were furnished with licences by the Indian Governments, withdrawable at pleasure, either by these authorities, or, in cases of exigency, by the Committee itself. There had been no need, therefore, for any body of regulations having respect to the general direction and controul of British subjects in China.

When difficulties presented themselves, the Committee acted according to the best of their judgment in the circumstances of the case, and it is plain that there was no lack of means to give effect to their resolutions.

It has certainly been the anxious desire of this Commission, upon every ground of consideration, to interfere as little as possible, till further instructions should reach them from England ; but in these particular cases they have felt themselves called upon to relax that rule.

They interfered not only in a sense of justice to those of His Majesty's subjects who claimed their assistance, but principally (and this point can hardly be too frequently insisted upon) because they plainly perceive the practical necessity of setting aside the mischievous impression that every British subject at Canton is at full liberty, in the case of a commercial dispute, either to concede or to refuse to submit his right to detain a sum of money claimed by another, to fair means of inquiry and determination.

Perhaps there is no place where a higher degree of mutual commercial good faith subsists than at Canton, or where it is more needful that such a feeling should be carefully fostered ; and it is owing in a great degree to this very circumstance, that perhaps there is no place where larger facilities present themselves for the extensive abuse of that confidence ; in the present conjuncture particularly, when an immense trade is thrown open to general speculation and adventure, such opportunities and risks must be vastly increased. In the spirit, and by the plain intent of the Act of Parliament, the Orders in Council, and our Instructions, it is clear that we are called upon to watch over and protect this trade ; and I repeat that I know no circumstances more calculated to injure its best interests, than any admission of the position, that there are no means to oblige a British subject to comply with the demand of another to submit a commercial dispute involving the retention of funds to an equitable mode of adjustment here or elsewhere.

A second Order in Council, of the 9th December, 1833, creates a Court of Justice, with " criminal and admiralty jurisdiction, for the trial of offences committed by His Majesty's subjects within the dominions of the Emperor of China, and the ports and havens thereof, and on the high seas, within 100 miles of the coast of China." The jurisdiction of this court seems to be strictly of a criminal description, and, therefore, disputes of the nature I have adverted to could not fall within its disposal. But, indeed, even supposing that it were possible to strain the construction of this Order to the extent that it vested the Chief Superintendent with a civil admiralty jurisdiction, I know not, with the means we have upon the spot, how it would be possible to avoid most perplexing difficulties, in the attempt to adjust such disputes as these by any process of that kind.

One opinion Mr. Keating has delivered to the effect, that, in our present situation, we have no authority to interpose upon the behalf of those of His Majesty's subjects who have claimed our assistance, seems to be founded upon a rigidly literal construction of that article of the instructions commanding us to take up our residence at Canton, and to exercise our functions there, and not elsewhere in the dominions of the Emperor of China, without His Majesty's sanction. We believe that the single object of this article is to deprive the Commission of the power to proceed to any other port in China than Canton, without His Majesty's authority ; and we are of opinion, that it is wresting it to a purport entirely foreign to its own intent, and to the whole spirit

of the Act of Parliament and the Orders in Council, to construe these words in such wise as would, in point of fact, for the present, deprive the King of all authority over His Majesty's subjects in this country. I must once more assure your Lordship, in a very earnest manner, that I am persuaded we should be seriously jeopardising national interests of considerable importance to abandon the right to interfere (so far as circumstances permit) to the extent that the Act of Parliament, the Orders in Council, and the Instructions have contemplated. We are authorised and commanded in those instruments to use our utmost efforts for the maintenance of peace and good order amongst His Majesty's subjects at Canton, and for the safe pursuit of this commerce ; and we do not perceive that the acts of the native provincial authorities have relieved us from the most efficient discharge of those duties that circumstances admit. In the exercise of authority, it always behoves men in public stations to proceed with the utmost circumspection (and, surely, in the position we are placed in, it is pre-eminently incumbent upon us to be extremely cautious) ; but the concession of the right to interfere, upon such ground as Mr. Keating has now advanced, would be a step which I must suppose would be very little likely to meet your Lordship's approbation.

Mr. Keating finds another argument in support of his exemption from any liability to do what we have required from him, in the fact, that we are none of us directly appointed by the Crown. Upon this point it seems to be sufficient to say, that the Royal Instructions providing for the filling of vacancies occasioned by the death, resignation, or removal of any members of this commission have been strictly adhered to ; and the appointments made in conformity with those Instructions have been publicly and officially promulgated in the newspaper. Any disregard of our authority resting upon grounds of this description is, in effect, a denial or disregard of His Majesty's lawful authority to make such provisions. I really feel, however, that it cannot be necessary to trouble your Lordship with a detailed reply to all the observations in Mr. Keating's letter of 11th June ; but one circumstance, it is a duty which I owe to this commission, and I believe I may say, to the public interests, to bring under your Lordship's particular attention.

At a certain period in the course of this protracted correspondence with Mr. Keating, he has neglected to acknowledge several communications which had been forwarded to him ; and as we were informed that he had come down to Macao, and as the last of these letters had been returned unopened to us from Canton, it was handed to a young gentleman in the Secretary's Office to be delivered to Mr. Keating at this place, in order that we might be assured it had reached his hand. Upon this occasion, Mr. Keating, to use his own language, appealed to His Excellency the Governor of Macao, as to " our right to attempt legislation whilst unrecognised here."

I offer your Lordship my assurance upon my word, that the particular circumstance which drew from Mr. Keating this appeal to the

Governor of Macao, is strictly confined in point of fact to the delivery of a paper to him, and in point of intention, to the simple desire to ascertain that it had reached its destination. Mr. Keating, it might have been thought, had sufficient proof before him, that we had no disposition to attempt the execution of any formal acts at Macao, in the fact that the formal injunction we forwarded to him, was signed within the limits of the port of Canton. I hope it will appear to your Lordship that there was no need for this description of appeal, or, indeed, I might say, of complaint, by a British subject to a foreign authority ; and if Mr. Keating's proceeding in this respect has not involved us in embarrassing discussions with the Macao government,—which in our present position in China, might have led to a high degree of public inconvenience,—I must ascribe the escape to that state of perfect understanding which subsists between his Excellency and this Commission.

Upon the whole, my Lord, we have interfered in these claims between Messrs. Turner and Co. (acting as representatives of absent British owners) and of Mr. John Smith, against Mr. Keating, because we believed, that it was within the plain intent of the law that we should intromit, if the need were, for the protection of His Majesty's subjects in their lawful pursuits in cases of this description, and also for other reasons which it is unnecessary to recapitulate. In the absence of any defined practice, we recommended such a course as appeared to us to be consistent with the general spirit of British law upon such subjects, viz., the fairest investigation that circumstances permitted, and an opening for appeal to higher sources, if appeal should be desired. Mr. Keating has, however, rejected every overture either to adjust the demand preferred against him or to submit to further inquiry upon the spot, or to give reasonable security that he would institute proceedings, in the nature of appeal, against the formal decision of the Superintendents in England, or to pay the money under a protest against the lawfulness of their injunctions. In fact, every effort we have made to induce him to submit these disputes to inquiry and adjustments has been alike fruitless ; and, under these circumstances, we have felt it our duty (with a view to fix the principle of liability) to pay the sums claimed against him upon the public account

It had been the intention of the Commission, at one period, to give publicity to all the circumstances of these cases amongst the British commercial community at Canton, and to declare that all persons thinking fit to transact business with Mr. Keating must be pleased to conform to the understanding, that, until those debts were paid, the Superintendents could afford no facilities for the adjustment of any disputes, which might arise with him ; that is to say, in any transactions originating subsequently to the date of the before-mentioned notice. Upon full consideration, however, they refrained from resorting to that measure, upon the ground, that it might lead to a public, and, judging from the tone of Mr. Keating's correspondence, probably not very temperate, denial of their authority as the King's officers,—

a contingency they have considered it expedient, for obvious political reasons, to avoid. Mr. Keating has complained, in very warm terms, of the harshness and illegality of any proceedings of that description. He insists that such powers cannot be granted to us, as they would not be recognised by the British Constitution as legal, even were the dispute in England, and with the Crown itself. He declares, that such a deed could only find a parallel in the arbitrary and tyrannical acts of the Star Chamber. It does not appear, however, that there would be any grievous practical injustice, of which Mr. Keating has a right to complain, in the notice ; that, as he would conform to no mode of adjusting commercial disputes which had been proposed to him, and as he persisted in retaining a sum of money, in spite of the opinion of all the persons, commercial as well as official, to whom the matter had been submitted, the Superintendents must declare, that, for the future, they could not interfere in any similar discussion which might arise with him ; and that all parties thinking fit to transact business with him, must be pleased to conform to that understanding. Such a measure would have been in sufficiently close analogy with a practice of which there has been no want of precedent here by the Company and their servants,—namely the withdrawal of licences. Had the dispute been in England, not with the Crown, as Mr. Keating has suggested, but precisely as the case is now, with an individual, the power of the Crown would probably have been invoked and implied in a very different form, that is to say, in the form of a sheriff's writ. Mr. Keating speaks of the hardship, cruelty, and illegality of these proceedings, but he has not said anything very satisfactory upon the fairness of his own conduct. I believe your Lordship will be of opinion, that there is no real foundation for these loud complaints of tyrannical and ultra legal intentions upon the true part of this Commission ; and Mr. Keating will probably find, at some future period, that these are not times when a man's own wrongous proceedings are to be glossed over by a tone of defiance, or by vague and vehement accusations of the nature he has advanced.

Practically speaking, the state of the case is this : Mr. Keating entertaining opinions that there is an absence of all power and authority over him, takes advantage of that supposed state of circumstances, to retain in his hands a sum of money claimed by another person, in spite of the concurrent opinions of several of the most respectable merchants in the place, to whom the case was submitted by his own consent, in spite of the opinions of this Commission to whom it was afterwards referred by his own desire, and in spite of every proposition and injunction that has been made to him, to submit to further inquiry here, or to give security that further inquiry should be had elsewhere. It can be within the intent of no law to sustain proceedings of this kind, for loss of laws, the avowed objects of which are the preservation of peace, the maintenance of good order, and the support of trade at Canton.

If it were admitted that Mr. Keating is perfectly right, and that every man has it in his power to do as he has done upon these occasions,

it is pretty certain that the peace could not be kept, and that commerce could not be pursued in this country. The dread of publicity, and the consequences of such a notice as has been suggested, appear to be the only motives within any reach of operation here, which will always enable the public authorities in this country to constrain an unwilling person to submit disputed commercial claims to inquiry here or elsewhere. If both parties consent to defer the settlement of such cases to another time and place, there can be no necessity for public interference ; but if one seeks to be heard, and the other refuses to accede to the proposition, some proper mode of meeting such an exigency must be devised, or I am afraid that commercial operations in this country will be unsafe for respectable persons.

It remains for us, very respectfully, but earnestly, to entreat your Lordship to give the subject of this communication your best attention. If we might presume to offer an opinion, we would humbly suggest that an Order should be passed by His Majesty in Council, granting to the Superintendents authority to promulgate some provisional scheme of arbitration (in cases of need) by compulsory process, in the manner proposed by Captain Elliot. In cases of contumacious resistance to submit to inquiry or adjustment, powers likewise to be given to declare to the British and Native commercial bodies, that subsequently to the date of that modification, no facilities existed for the adjustment of any disputes which might arise in the transaction of business with the recusant parties. In those particular cases adverted to in this correspondence, we would suggest, with submission, that Mr. Keating should be once more called upon by your Lordship's desire, to pay the public claims against him, and that he should be informed, that his failure to do so would be followed by a public notice to the effect I have just described.

I have, etc.,
(signed) G. B. ROBINSON.

Viscount Palmerston to Captain Elliot

Foreign Office, November 8, 1836.

SIR,—His Majesty's Government have not failed to take into their attentive consideration Sir George Robinson's despatch of the 1st of July, 1835, relative to the claim preferred by Messrs. Turner & Co. of Canton, against Mr. Arthur Saunders Keating, of the same place, for a balance of 300 dollars, alleged to be due by him to the owners of a vessel called the *Planter*, on account of a freight of a cargo of rice, consigned to Mr. Keating by a mercantile house at Batavia, and which balance Mr. Keating refused to pay, on the plea, that his rice, after having been landed and passed for sale to a Hong merchant at Canton, named Mowqua, had by him been made subject to the payment of 300 dollars, which he claimed as "insurer of the vessel," on account of certain port charges and fees : the charter-party having stipulated that the port

charges should be borne by the ship. This case, with the Minutes of Proceedings relating to it, has been submitted to the consideration of the law officers of the Crown ; and it appears to His Majesty's Government, from the report of those officers, that the question between Messrs. Turner & Co. and Mr. Keating is one merely of private right, and to the decision of which the ordinary tribunals of this country are fully competent. In fact, the only question to be decided is, whether the ship *Planter* had earned her freight when the rice was delivered into the godown of Mowqua, the Hong merchant who secured the ship.

The facts of the case are not clearly stated in the papers sent home by Sir George Robinson ; but from the Minutes of Proceedings transmitted in his despatch above-mentioned, it would appear that the Hong merchant Mowqua secured the ship at 900 dollars, and that this sum, which was due as port charges, was the only sum lawfully demandable by the Chinese authorities ; that this sum was duly paid by the consignees of the ship to Mowqua, who thereupon gave his chop or receipt for the same ; and that Mr. Keating might have had the rice, or have disposed of it as he thought fit ; but that by his desire, and for his convenience, it was deposited by Mowqua in his (Mowqua's) godown at Canton, and that Mowqua illegally refused to let Mr. Keating remove the rice without paying a further sum of 300 dollars. Such at least appears to be the outline of the transactions as reported by the Superintendents ; and supposing the facts to be so, it is clear that the rice was deposited by Mowqua as Mr. Keating's agent, and that the owners of the ship had fully performed their contract, and consequently were entitled to receive the whole of the sum due for freight.

What I understand Mr. Keating to represent in his various letters entered on your Minutes, is, that it is a fallacy to assert that the rice ever was in his possession, or under his control ; that Mowqua, as the securing Hong Merchant, had the ship and cargo in his power, and that whatever contract Mowqua might have made with Messrs. Turner & Co. as agents of the owners, he (Mowqua) never would have parted with the cargo, without receiving the 300 dollars in dispute : that Mowqua held the rice as security merchant, and would not have permitted it to go out of the ship to any other place than his own godown, where he would retain a lien upon it for what he claims.

It is impossible for His Majesty's Government upon the documents before them, and with their imperfect information as to the rights and duties of the securing merchant, to pronounce any positive decision as to the real merits of the case. But the fact stated by Messrs. Turner & Co., in their letter to Messrs. Forbes, Dent, and Jardine, that the cargo of another ship, the *Madras*, arriving at the same time, was delivered to the godown of a different merchant from the one who secured the ship, is strongly corroborative of the view of the case taken by you and your colleagues. Indeed, the claim of Messrs. Turner & Co. upon Mr. Keating, as stated in their first letter, was for two sums

of 300 dollars each, one on account of the ship *Planter*, the other on account of the ship *Madras*. The latter claim appears, in the course of the correspondence, to have been dropped, the reason not being distinctly stated ; and on these circumstances, so important in their bearing upon the merits of the other claim which formed the immediate subject of the reference home, no remark is made in the Chief Superintendent's despatch.

With regard to the step taken by the Superintendents, in consequence of Mr. Keating's continued refusal to pay the sums demanded of him, on account of Messrs. Turner & Co. and, in another case, by Mr. Smith, amounting together to £91 17s. 6d. sterling, I have to state to you, that, in advancing on the public account, the amount of these demands upon Mr. Keating, with the view of making him a debtor to the Crown, the Superintendents adopted a course which they had no power whatever to take. Mr. Keating certainly is not a debtor to the Crown in respect of this transaction. The case was a private one of an attempt at extortion on the part of the Hong merchant Mowqua, who, in his character of agent, demanded from his principal a sum to which he was not entitled ; and refused to give up to that principal the goods in his custody, until his demand was satisfied.

As, however, the payment was made by the Superintendents, in the exercise of their discretion, with the view of preventing further discussions, which, under the peculiar circumstances of their position, they considered might have proved injurious to the British commercial interests in China, it is not my intention to make them personally responsible for the advance although their decision was certainly a mistaken one. But it is my duty to caution you, in the most express manner, against pursuing a similar course on any future occasion. It is probable that Mr. Keating, when he finds that His Majesty's Government incline to an opinion on the subject adverse to his own, may no longer object to repay the sum which was advanced for him by the Superintendents ; but, I repeat, that His Majesty's Government cannot regard Mr. Keating as a Crown debtor, in respect of the payment made by you and your colleagues on his account.

His Majesty's Government do not consider that this is a transaction which would give any just ground of demand against the Chinese Government ; but, as it appears that a demand was insisted on by the securing merchant, which the Chinese regulations do not warrant, and, consequently, that the merchant was guilty of an act of extortion, admitted on all sides to be such (the dispute being only on whom the charge should fall), you will avail yourself of any suitable opportunity that may offer to call the attention of the Chinese authorities at Canton to the subject ; and to endeavour to prevail upon them to put a stop to such acts of extortion, by causing their own regulations to be strictly carried into effect.

I am, etc.,

(Signed) PALMERSTON.

In a further despatch, of the same date, to Captain Elliot, Palmerston observed "that His Majesty's Government are fully aware of the inconvenience arising both from the undefined state of the Jurisdiction of the Superintendents in China, and from their want of power to enforce decisions to which they may come, on matters submitted to them by members of the commercial body in China,"¹ and added that the whole question of the nature, extent, and powers of the future establishment in China was under consideration, and that the position might be altered in the near future ; recommending, in the meanwhile, abstention from interference, beyond friendly suggestions and advice to the parties concerned.

On the question whether Superintendents of British Trade in China had power to deport British subjects from Canton, Lord Palmerston further wrote to Captain Elliot on November 8, 1836 :

"I have observed that in your Minutes of the 15th of October, 1835, relative to the case of Mr. Innes, you express an opinion, that the power given by the Act 26. Geo. III, c. 57, sec. 35, to the Supracargoes of the East India Company, to arrest and send to England persons resident at Canton, may now be lawfully exercised by the Superintendents of British Trade in China, by virtue of the Order in Council of the 9th December, 1833, which transfers to the Superintendents all the powers and authorities which were by law vested in the Supracargoes, at the date of the termination of the exclusive rights of the East India Company.

"As a misconception on this point might give rise to much embarrassment, both to His Majesty's Government and to the Superintendents personally, I have to state to you for your guidance, that the clause of the Act of 26 George III upon which you rest your opinion, was repealed by the 146th clause of the Act 33 Geo. III, c. 52, and further, that the only power exercised by the Supracargoes, was that of removing unlicensed persons. But as no licence from His Majesty is now necessary to enable His Majesty's subjects to trade with or reside in China, such power of expulsion has altogether ceased to exist with respect to China."²

¹ *Correspondence relating to China*, 1840, pp. 95-100, 127-129.

² *Ibid.* p. 129.

APPENDIX VIII

THE AFFRAY OF 1837

Captain Elliot to Viscount Palmerston (received March 19, 1838)

Canton, September 25, 1838.

MY LORD,—An accident of a serious nature has just occurred at this place ; and, being apprehensive that unfounded and disquieting reports may reach England upon the subject, I forward this Despatch by a ship bound to Bombay, in the hope of saving the December overland mail.

Two Lascars, belonging to an English passage-boat, landed on the evening of the 20th instant, on the north shore of the river, about two miles below the Factories, and a fray took place, in which a Chinese was declared to have received several severe stabs with a knife.

There were two other Lascars on shore at the same place, and although it does not seem that they were engaged in the affair, they, with the two principals, fell into the hands of the Chinese police, and the whole four were brought up to this place and confined in the Consou House.

On the morning of the next day (the 21st) the magistrate in whose district the disturbance occurred, sent them to me for examination, but declined to leave them in my hands.

I had no strong objection that they should remain in the custody of the Mandarins, at the Consou House, during the daytime, because I could always know whether they were removed within the walls of the city, and then transmit the most urgent appeals for their immediate delivery to my care ; but, as night approached, and it would be difficult to watch proceedings, other steps became necessary.

At eight o'clock, therefore, I sent for the three official merchants to the Hall, and demanded that the men should be given up before ten o'clock that night, upon my pledge that they should be fairly tried according to the laws of my country (and in the presence of Mandarins), for any crime alleged against them.

Howqua replied, with composure, that these persons were in the custody of the Mandarins, charged with a violation of the laws of the empire, and pending the determination of the safety of him who had been severely stabbed by one amongst them. If Englishmen went to France, he argued, they were amenable to the justice of that country ; and then, taking this rather displeasing occasion to compliment me upon a presumed reasonableness of disposition and love of justice, which, he said, had secured for me the respect of the Governor, he required me to show why the case should be different when Englishmen came to China.

I answered that I would venture to say my Government would admit all the force of this reasoning, as soon as it could be made at all

applicable by the Emperor's gracious will to place my countrymen upon the like footing in China, with respect to the freedom of intercourse and the equal administration of the laws, as they stood in France, considered with relation to these points.

There was no pretension in England, he might assure himself, to dictate any change of policy to the Chinese : that was a high matter, which depended upon the Imperial Wisdom and pleasure ; but it was not to be denied that the present state of things was attended with great inconveniences, and one amongst them was, the utter impossibility to concede their right to try British subjects for a breach of Chinese laws, by Chinese officers, whilst those laws were only partially administered towards them, and whilst appeal to the higher Chinese tribunals is entirely shut out from them.

All that could be justly expected from my government, under such circumstances, was to provide means for the fair trial of British offenders against Chinese life or property by British laws and British officers.

With respect to the merits of this particular case, I urged that no European had seen the body of the man said to be stabbed ; that the Lascar denied the whole allegation, and that it was certain no knife had been found upon him.

I concluded by insisting that the men must be delivered to me by ten o'clock, or that I must quit Canton, leaving upon his Excellency and themselves, in the form of a protest, all the grave responsibility of any evil consequences which might ensue from their further detention.

I suggested, at the same time, that, as soon as it was known I had left the Factories, it was too probable some eight hundred or a thousand men might come up to Canton from Whampoa, to carry a petition to the city gates for the restoration of the people. Whilst I remained, my countrymen would be patient, feeling assured that the safety of the people was certain ; it was not easy to believe they would remain so after I had left Canton.

The Lascars, it was to be observed, were a very excitable race of people, and they might urge their commanders to take some hazardous step, which no man would deplore more sincerely than myself ; but it would be wholly out of my power to control events, if they constrained me, by their unreasonable refusal of my proposal, to retire from the stage of my public duties, the very first of which was the protection of my countrymen.

Howqua was evidently shaken by this tone of representation, but he still anxiously entreated me to wait till he could see the Governor in the morning. I felt, however, that this was one of those cases in which firm countenance and rigid adherence to my original declaration was all I had to depend upon ; and I closed the discussion by desiring the people to prepare my boat.

At this point Howqua gave way, and the men were forthwith restored to me.

They have been in my custody ever since ; and your Lordship may be assured that I will never give them up to any other form of trial than that to which I have pledged myself—namely, a trial according to the forms of British law.

It is satisfactory to add that the Chinese is said to be doing well, and that the tranquil course of the trade has not been interrupted.

I would in this place, my Lord, express a respectful but earnest hope, that no time may be lost in the formation of adequate judicial and police institutions for the government of the King's subjects in this empire ; and I have no hesitation in assuring your Lordship that it is in my power to secure from the provincial authorities the most formal sanction to their operation.

For several months in the year, there are not less than 2000 of his Majesty's subjects at Canton, Whampoa, Macao, and the immediately adjacent anchorages ; and your Lordship is aware, that, except in cases of homicide, the Chinese Government do not interpose at all for the preservation of peace between them and their own people, or between his Majesty's subjects themselves.

Your Lordship will conceive the exceeding risk and unsuitableness of the absence of defined means of sufficient control.

I have, etc.,

(Signed) CHARLES ELLIOT.

Macao, October 3, 1837

P.S.—Particular circumstances calling me to this place on the 30th ultimo, I apprized the Provincial Government that I adhered to my pledge with respect to these people, but must take them away with me to Macao. The day after my departure from Canton, accompanied by the Lascars, a chop was issued by the district magistrate, desiring that they might be finally delivered to me to be dealt with as I saw fit.

(Signed) CHARLES ELLIOT.¹

APPENDIX IX

TRANSLATION OF A CHINESE DESPATCH SENT TO RUSSIA, THE 21ST JANUARY, 1729

*From the Tribunal of Directors of the Inland Provinces of the Great
Taychinsky (Chinese) Empire to the Russian Empire*

Our Van Palbany, residing at Urgo, for the frontier affairs, having informed our tribunal that he had received a dispatch from your senate, by your Lieutenant-Colonel Ivanoff, we have presented it to our great and most wise emperor. The following is the reply proceeding from him :

¹ *Correspondence relating to China*, 1840, pp. 231-232.

In this, we observe, the Russian senate confirms its former dispatch—deceiving us, as before, concerning the head thief Ulaldskay, and his companions. The fault is acknowledged and palliated, but there appears the same duplicity as formerly. We therefore command the directors of the tribunal of frontier affairs to write a clear, plain, and intelligible dispatch to the Russian senate.

Obeying this command with respect, after examination into the case, it is found : That should a thief, belonging to either nation, be discovered on the frontiers, he is to be examined in their joint presence, and, if guilty, punished with death. This stipulation was agreed to by the commissioners (Ambani) chosen from both sides, sealed and mutually exchanged in the 33rd year of the reign of our heaven-enthroned emperor. It is kept in the register of our tribunal, and among the papers of your senate, and has always been fulfilled, except by your Ambani.

You may now say, it is contrary to the laws of the Russian empire to put a man to death : this is a deceit, and indeed how can such laws exist ? Since the beginning of time there certainly never was an empire whose laws ordered men to be killed, but a man acting against the law punishes himself, and becomes worthy of death. Capital punishments you now say are unknown in Russia ; why did you not recollect this in the 33rd year, when we made the treaty, and you agreed that thieves of either nation should be executed ? It seems it did not come into your heads then, for you said nothing about it.

Pursuant to this law in the 44th year, two men, Gemphill and Kolushank, of the families of Natosolonsk and Banurmay, who stole eleven horses from you, were examined in the presence of both parties, condemned and executed. You should then have represented to us your law, have saved their lives, and only punished them with whipping and exile ; but you were silent, and Gemphill and Kolushank were executed in your presence.

Our great empire acting eternally according to law, and the faith of treaties, did this, not for the preservation of friendship, but from the love of truth, which it greatly esteems, and wishes always to follow ; but you, not executing the thief Ulaldskay, break the laws of friendship and the faith of treaties.

In your dispatch you say capital punishments are abolished in Russia, and delinquents only whipped and sent into perpetual slavery, but this is still more contrary to reason, for we think that if such change had taken place, you should have asked, if in the concerns with us, we agreed to it, and if we did, these men should have been brought and punished on the borders in our joint presence, but you did not do this with Ulaldskay and his companions ; you only tell us they have been whipped, and sent into slavery for life. In this your deceit is manifest. Further, you say the head thief Ulaldskay is dead in slavery : this may perhaps be true ; but there are still left the great thieves, Yperneay, Gasseu, Kethin, and the thieves Mentz and Platun ; what hinders these being brought to the frontiers, and

punished in our joint presence ? You tell us, in your present dispatch that they are all dead, and the affair of course ended, but whom do you deceive ? You really are very false.

Shall we believe that, in consequence of your new laws, your former government did not put any one to death, and only punished with whipping and slavery : Let it be so, yet still this should have been inflicted in our presence. Having failed in that particular, do not you acknowledge your former governor in fault, and guilty of misconduct ? Your senate thus giving perpetual false excuses, and clearing the conduct of your late governor, only troubles both sides ; for our great empire, perceiving that you wish to act according to your own will, by the obstacles you throw in the way, and your duplicity, will on no account permit the trade to be opened. Although our two empires border upon one another, yet our empire may call itself the elder brother. Thus, holding in the rank of empires the place of elder brother, and having, at your requisition, and in your presence, punished Gemphill and Kolushank with death, while you now refuse us the same satisfaction against your people, were our great empire including all the universe to submit to this, do not you think posterity would to all eternity laugh at us !

To be short ; let Ulaldskay be dead, there remain the other thieves, they must be brought to the frontiers, and punished in our joint presence. If it be true that they are all dead, then your former governor must be sent to the borders, as one guilty of misconduct ; he must there be punished in our presence ; the trade may then recommence ; but if you do not punish the thieves, nor your governor, but make useless excuses, you may depend upon it, the trade shall never be opened again.

If, therefore, you esteem truth, the faith of treaties, or the laws of friendship, you will, though with concern, punish your governor for his fault and misconduct ; but with your perpetual excuses, and duplicity, we see this affair will not be ended these hundred years. Although the trade shall not be opened, yet our great empire will not, for such a trifling cause, break the bands of friendship in any other manner, than by this prohibition. And you, on the receipt of this dispatch, ponder well, examine, and consider this act, as you find proper, fit, and beneficial.

Thus much to you, from our heaven-enthroned emperor, in the fifty-fourth year, 2nd month, and 2nd day of his reign.¹

¹ It can hardly be necessary to caution the reader against hastily condemning the Russians in this case. The Chinese are seldom at a loss to make out a plausible tale, but, were we in possession of the Russian statement, the facts might probably appear in a light extremely different (Staunton's note).

Sir George Thomas Staunton, *Miscellaneous Notices relating to China and our Commercial Intercourse with that Country, including a few Translations from the Chinese Language*, pp. 89-94.

APPENDIX X

A CONTEMPORARY VIEW OF EXISTING ABUSES IN CHINESE
LEGAL PROCEDURE

A critic signing himself "R. I." contributes the following article, illustrating the mode of administering justice in China at the period, to *The Chinese Repository* of September 1835 :

"Every officer of government,¹ from the first to the ninth rank, must be previously qualified by a literary or military degree ; but the clerks and other inferior attendants are not considered to have any rank, or to be permanently distinguished from the rest of the community. The ninth rank includes,² however, village magistrates, inferior treasurers, jailers, etc. Subordinate to the great officers of the provinces already enumerated, are the heads of the several foo and heen districts. Some of the largest of the heen, as those of Nanhae and Pwanyu, which constitute the city of Canton and suburbs, are said³ to contain each about 1000 unpaid police ; the middle-sized ones to have 300 to 400, and the smallest from 100 to 200.

"The duties of some of the higher grades of the above enumerated officers are pointed out in the *Repository*.⁴ The others may be generally surmized from the nature of their offices. It does not appear what salaries are paid to them ; but it is probable that they are very small, and in some cases, as with the police, none at all. In the latter case the perquisites of office must, of course, supply the place of salary. We have already stated that bribery, with respect to the higher departments of government, is connived at, if not sanctioned, by the emperor ; we are not surprised, therefore, to find that it is publicly advocated even by his officers, as will be seen in reference to a document issued by the fooyuen of Canton quoted in this work.⁵

" 'All the appointments and removals of officers (according to section 48 of the penal code), whether civil or military, shall depend solely on the authority of the emperor. If any great officer of state presumes to confer any appointment upon his own authority, he shall suffer death by being beheaded, after remaining in prison the usual time.' A note by the translator of this rescript adds : ' that the vice-roys and commanders-in-chief of provinces are constantly in the habit of filling up the various civil and military appointments under their respective jurisdictions, when they become vacant, but it is always done expressly by virtue of the authority conferred by the emperor, and generally stated to be only *ad interim*, until his majesty's pleasure is

¹ Staunton's Penal Code, note to section 7.

² Morrison's view of China for philological purposes, p. 100.

³ *Canton Register*, August 2, 1830.

⁴ *The Chinese Repository*, ii. p. 207.

⁵ *Ibid.* i. p. 384.

known.' For confirmation of the fact stated in the note, and to learn how the appointments are filled up, we refer to a memorial of a censor presented to the emperor in 1829,¹ in which he praises his majesty for his intense desire to attain good government, but adds, that it is defeated by the infamous conduct of the provincial rulers. He requests the emperor to prohibit several abuses ; such as, magistrates quitting their districts to dance attendance on governors, to look for promotion. On public holidays, as on the anniversary of the governor's birthday, or of his wife or mother, away go the country magistrates to town to pay their respects, whilst the affairs of the people and the revenue are left to underlings, or neglected altogether. Some carry this practice so far, the censor says, as to absent themselves altogether from their districts, in order to get placed on a profitable commission of inquiry, or to seek promotion. Another abuse is, that governors appoint these magistrates to be their own secretaries. ' It is the governor's duty,' he says, ' to pay his own secretaries, but he takes his majesty's servants who do the work for nothing, so far as money payment goes ' ; but they look to repay themselves at the people's cost, or by getting a higher appointment through the governor's influence. A third abuse is, that the governors put their own creatures from mere lictorship into respectable offices *pro tempore*. But these low people fail not to fleece the people, during the short time they hold the situations. The last evil he complains of is, that governors impose on the emperor by recommending unfit persons for promotion and rewards.

" Although the censor thinks it necessary to require the emperor's prohibition of these abuses, they are already provided for in the code, and they afford additional examples, to those already quoted, of the opposition of the theory and practice of the law. The section which prohibits the great officers to nominate to official situations is already cited. Section 54 is headed ' officers of government quitting their stations without leave ' ; and section 173 prohibits the officers of the tribunals to leave the walls of their respective cities to attend on even an imperial commissioner on his route through their districts.

" The secretaries of the governors and fooyuens spoken of by the censor, the clerks of the court, the szeyo or jailor, and the police-runners will be found to stand very prominent in the imperial maledictions against abuses. The first not so often indeed, since they are not recognised officers of his majesty ; but they seem to be the instruments of extortion throughout the provinces, and to become thus qualified to preside in their turns over similar machinery. ' We have lately seen,' says an article in the *Canton Register* of April 15th, 1830, ' an account of the order of mandarin domestics, written by themselves, and giving a brief outline of their rise, progress, and duties. The domestics of a governor or fooyuen, says the writer, are complimented by the title of " mandarins of the court," and now the domestics of the lower officers get the title of *changsuy*, which a former emperor

¹ *Canton Register*, May 18, 1829.

conferred on his own faithful servants. These domestics (*keajin*) hold a middle place between the mandarins and the people, and assist in the management of public business ; they are well dressed, and carry themselves loftily.

“ ‘ There are several grades among them. The first class consists of the descendants of poor officers, who neither having been educated for any learned profession, nor brought up to a trade, and having no property to live on, go forth to other regions, and there endeavour to throw themselves into some great family, and to make themselves indispensable in it by pleasing every one. Others are the sons of once opulent, but now bankrupt, merchants, who have learned something of the ways of the world, but being left without property, are glad to become mandarin servants. A third class consists of those whose education has been neglected, and who in a course of gambling and debauchery have acquired knowledge of life, and the forms of good breeding. A fourth class consists of those who have learned some trade in their youth, but through idleness and a fondness for roving, have neglected it. There is another class of very low dissipated men, who have never had any regular occupation, nor listened to the instruction of their parents : but are fond of good eating, fine clothes, and many friends, singing songs, and acting plays. These men aspire also to the respectability of the mandarin domestics, and when they get employed, they lend themselves to everything base, perhaps for the sake of gain, conniving at their wives living with their masters. Then extortion, theft, usury, and every mischief, is the consequence : for there are drunken, debauched mandarins who employ such fellows. These mandarins have eyes without pupils ; they cannot distinguish a common stone from a precious gem, and they are often ruined by such servants.’ ”

“ The employment of some of the above classes of persons, who, by the way, are not peculiar to China, has most likely another end, which section 82 of the code is intended to guard against. It is there enacted that ‘ all citizens who, not being obliged to labour for their own support, place their unemployed sons, grandsons, brothers, or nephews, in the suite of an officer of government, in order to evade the performance of the personal services due by them to the state, shall (being masters of families) be punished with one hundred blows ; and the officer of government conniving at such evasion shall be liable to the same punishment, or in the event of his having received a bribe, to such greater punishment as he might be liable to, for taking a bribe to such an amount, for an unlawful purpose.’ This section of the code, which is classed with others relating to the collection of taxes, and performances of personal services, seems to imply that the domestics of the officers of government are exempt from those dues.

“ Having seen of what stuff the lower classes of the governmental servants are composed, we proceed next to inquire into the manner in which they perform their duties. The notices on this subject in the *Peking Gazette* confound the duties and responsibilities of the magis-

trates and their inferiors so continually together, that it is difficult and perhaps unnecessary to separate them. The malversations of the former too, like those of the higher ranks, are to be gathered by implication, rather than by direct charges against them, except in a few instances of very flagrant injustice.

“ To begin then with the capital and its environs. We find in the *Peking Gazette* for February the 10th of 1824, the memorial of a censor concerning the malversations prevalent among the clerks and official assistants in the governmental offices of the province of Cheihle. ‘ The clerks in the large and small offices of Cheihle province,’ says the censor,¹ ‘ being assisted by their own friends in the prosecution of public business, the latter make use of their official influence in the commission of every species of iniquity. I the censor have turned my whole attention to the examination of these abuses. Truly there is none to whom they will not vend their services ! But this province, being the place of imperial residence, ought to be governed with more especial probity, as an example to all others. It appears that in the offices of the treasurer and judge there are, in addition to the regular assistants, persons who call themselves keochoo (heads of departments), who, dividing themselves into two bodies, those who manage internal, and those who manage external, affairs, monopolise all the business of the chow and heen districts ; and in the progress of all the ratification or reversal of the decisions of the inferior courts, are guilty of all kinds of false and criminal combination. The official friends of the chow and heen magistrates, having formerly been clerks in the higher courts, have a secret correspondence with the above keochoo, and in all matters of judgement consult together with them, for the purpose of deceit and plunder. When the business of government falls into such hands as these, they prove, in fact, the destructive insects of the soil. This evil practice,’ concludes the censor, ‘ since it exists to such an extent in Cheihle province, must also prevail in others.’

“ In the *Peking Gazette* of April, 1819, we find similar complaints of neglect in the administration of justice in the following report of another censor.² A censor has presented a document to the emperor, complaining of flagrant neglect in the administration of justice, even in the province of Cheihle. He says, ‘ the magistrates of the chow and heen are none of them diligent and vigorous in the execution of their duty ; and even in the province of Cheihle, there are many who, without the least fear or shame, connive at robbery and deceit. Formerly, horse-stealers were wont to conceal themselves in some secret place, but now they openly bring their plunder to the market for sale. When they perceive a person to be weak, they are in the habit of stealing his property, and returning it to him for money. On reporting this to the officers, they treat it as a trivial affair, and blame the sufferer for not being more cautious. There have been instances of thieves

¹ *Transactions of the Royal Asiatic Society*, i. p. 384.

² *Indochinese Gleaner*, January 1820, p. 236.

being apprehended, and on their persons have been discovered governmental warrants, which showed that they had taken advantage of being sent out to apprehend thieves, to steal for themselves. Formerly, constables were forbidden to harbour thieves, but now they themselves adopt these nefarious practices. When a matter is reported to the officers, they lay it by and do not inquire into it ; and on its being carried to the higher courts, and orders issued that the affair be attended to, they just apprehend a few thieves, and after a few days let them go again. In the districts of Tinghing heen, Sinching heen, Chuh chow, Leangkeang heen, and Koongan heen, justice is administered in this remiss and careless manner. And what is still more flagrant, at a village between Wanping and Fangshan (close to the imperial residence) there are very many thieves concealed, and some Mohammedans mixed with them, who go out by night in companies of twenty or thirty persons, carrying weapons with them ; and in the district of Fangshan, they frequently call up the inhabitants, break open their doors, and having satisfied themselves with what food and wine they can obtain, they threaten and extort money, which if they cannot procure, they steal their clothes or ornaments, oxen and horses, and depart. They also frequently go to shops, and having broken open the shutters impudently demand money, which if they do not get, they set fire to the shop with the torches which are in their hands. If the master of the house apprehends a few of them, and sends them to the magistrate, he merely imprisons and beats them, and before half a month allows them to escape, giving out that they have run away, when the fact is that they have been purposely released.

“ ‘ Now in my opinion, the magistrates of the districts are the shepherds of the people, and they ought, immediately on the first report of a robbery, to proceed to apprehend the criminals, and then they would fulfil their duty ; but now their allowing the people to report flagrant as well as clandestine robberies, without proceeding to a strict examination, is first, because they are weak and hindered by their fears ; and secondly, because their sluggishness prevents them : not knowing that thus the evil has already risen to a height too great, and it will at length be like “ fattening the ulcer, till misery is completed.” I intreat that an order may be issued, that at the approaching triennial examination, these useless and worthless magistrates may not be noted and recorded with honour ; but that then a strict inquiry may be instituted, that if there are any thus weak and negligent in performing the duties of their office, their names may be signified, they be deprived of rank, and their negligence punished as a warning to all sluggish officers in future. Also, that a selection be made of some intelligent, decided, and able men, who shall adjust and rectify these disorders. Then the country will be peaceful, and the people tranquillised and happy. I will mention an instance of Wan Chinghwuy, the judge of Shantung, who having apprehended some thieves, made a selection among the magistrates of that province, of two or three decided, intelligent, daring, and active men, whom he

sent to make inquiry in any village or district where thieves might lurk, and according to the distance of the place, or the number of the supposed banditti, he sent police officers and soldiers to watch and patrol, to search into their haunts, and apprehend their ringleaders ; in consequence of which the province of Shantung, from that to the present time, has been a little peaceful and tranquil. I beg therefore that an order may be issued to the superior officers and judges of the province, that they would make suitable regulations, and adopt means of preventing these evils in future.'

" It was the same censor probably who, in November of the same year,¹ requested the emperor to interdict the employment of Mohammedans in the police ; to which his majesty replied, that the request was improper, since Mohammedans are dispersed over all the provinces. ' If, as the censor reports,' adds the emperor, ' some of them join with the thieves they are sent to take, let them be punished according to law. But if, on account of one case of this kind, all Mohammedan subjects be interdicted from filling places under government, it would not be equitable.'

" In the 129th number of the *Gazette* for 1827,² we find the governor of Peking reforming the courts, and endeavouring to relieve the people from the retainers in them, some of whom, he says, are necessary, but they are dreaded by the people as much as wolves or tigers. He effected the dismissal of 23,921 from the courts of the province of Cheihle alone ! The same or another censor complains,³ the same year, of the oppression and extortion practised in the neighbourhood of Peking by the police, who raise hundreds of thousands (of taels) annually from the people, and weary them of life.

" In the following year, the unpunished robberies were, according to another report,⁴ daily increasing, owing to the police participating with the thieves. They sometimes receive part of the stolen property, to connive and leave the thieves at large, or, after seizing them, to sell them their liberty. When the officers of government become urgent, the police apprehend old thieves, who have been branded, or such as have returned from banishment, but who are not concerned in the particular crime in question, in order to save appearances and leave the real offenders unmolested. Last winter, a hundred and one were seized in some particular case, seventy of whom were innocent of the crime with which they were charged. Peking is, he adds, studded with police and military posts, as the heavens are with stars ; so that no thief could escape, but for the reasons he states.

" Another censor renews the charge in 1830,⁵ and represents the injury done to the public by the extortion of the police. ' They no sooner get a warrant to bring up witnesses, etc., than they assail both plaintiff and defendant for money to pay their expenses, from the

¹ *Indochinese Gleaner*, July 1820, p. 345.

² *Malacca Observer*, October 7, 1828.

³ *Canton Register*, August 9, 1828.

⁴ *Ibid.* July 16, 1829.

⁵ *Ibid.* August 25, 1830.

amount of 100,000 to several hundred thousand cash. Then the clerks in the office must have double what the runners get. If their demands be not satisfied, they contrive every species of annoyance. Then again, if there are people of property in the neighbourhood, they will implicate them. They plot also with pettifogging lawyers to get up accusations against people, and threaten and frighten them out of their money for miles around. They form leagues too with banditti, etc., etc.' The emperor admits the truth of the picture. He appoints officers, he says, to preserve the security and comfort of the people; but the people suffer from no cause so much as from the police runners of those same magistrates. He contents himself, however, with ordering them to keep the police under strict control.

" In 1832, the governor of the province of Cheihle laid ¹ before the emperor a detailed account of the state of the police, in which a specific remedy is at last pointed out. He shows that the evil arises from inadequate pay, which obliges the inferior officers of the courts of justice to join with robbers, instead of apprehending them. He found out this, he says, by experience, when officiating as fooyuen in Shantung, and he recommends a loan of 100,000 taels from the public funds to enable him to pay the police, and induce them to act with the government, instead of siding with the thieves. This sum is only to be borrowed from the Cheihle treasury; and one half of it is to be placed out at compound interest in the merchants' hands, until it has increased to the original sum, when it is to be replaced in the treasury, and the other half is to be appropriated immediately to pay the police. We may conclude that this reform of the government was carried beneficially into effect, since we find no more complaints against the Peking police. The governor's principle must, however, be introduced into the higher departments of the government and of the tribunals, in order to work a radical cure. We have an account of a supposed case of bribery extracted from a *Pekin Gazette* of 1831, which is characteristic both of the system of the tribunals, and of the persons who manage the subordinate, if not the superior, parts of the machinery, we extract at length.²

" " The Criminal Board respectfully presents this statement to his majesty, concerning certain written papers found on a dead body which was being examined by the szeyeun, which papers contain evidence of a secretary of the said Board having received bribes. This statement is therefore reverently and explicitly to inform his majesty thereof, and request that his majesty's will for the degradation of the said person, and for another person to leave his office, that they may both be confronted.

" " On the second day of the fourth moon of this year, a statement was received from Tihhwan, tsoling of the yellow banner, a Mantchou, giving information that Kwa Urhkea wife of the secretary Kingyuen had hanged herself. The szeyuen for that moon therefore received

¹ *Canton Register*, March 17, 1832.

² *Ibid.* March 24, 1831.

orders to take with them the police, and go and examine minutely if Kwa Urhkea's body was without wounds, and if she had really hung herself. On examination it appeared, from the evidence of King-yuen, that he is secretary to the Yunnan sze of the Board of Punishments ; that his wife Kwa Urhkea was very fond of spirituous liquors, and when intoxicated, was in the habit of making a great noise and beating Hekin the waiting-maid : that on the 27th day of the 3rd moon, having become intoxicated, she as usual began scolding and beating Hekin, and that Hekin, being of a hasty temper, wounded herself in the forehead with a knife ; and that, on the night of the 1st day of the 4th moon, Kwa Urhkea found opportunity of hanging herself, This witness being confronted with Pokang the brother of the deceased, and others, the testimony of them all agreed. On examining the body, there were found, under the sash and in the fore part of the stocking of the deceased, two written papers and two cards on which were the names of Shen Choo and Han Tihlung. The two written papers were found to contain the following words :

“ ‘ Shen Choo, 30,000 cash ; ’ ‘ Han Tihlung, 30 or 40,000 cash.’

“ ‘ We, the members of the said Board, immediately appointed officers to investigate the subject, and after attentive examination, it now brought forward charges against Chow Yungming, an officer under the Yunnan sze, and others, for having, on account of a debt, beaten to death a person named Wangta, for which Chow Yungming, being tried, was condemned to be strangled. In this case Shen Choo, a tsan-ling and messenger of the ho-ke cantonment of the bordered yellow banner, was concerned, having, after the affray, conciliated the parties, but his conduct being by no means improper, his trial was dispensed with, and the case after having been laid before your majesty, was settled. Again, it is on record that in the 11th moon of the 9th year Han Tihlung, an officer under the Nganhwuy sze, having had a contest with Sheihfuh of the imperial house, about buying and selling certain articles, the said Han Tihlung was condemned to be bamboosed, and there the case ended. Having investigated to the kernel, we find the circumstances of trial and punishment of the said offenders in perfect accordance with the laws, without either punishing them more slightly or more severely than they deserve. The secretary Kingyuen, however, has not at any time been tried or punished for any offence, and these two cases have not the least relation to the death of Kwa Urhkea. But as Kwa Urhkea was a female, if Kingyuen is really not guilty of any offence, how is it that she knew anything of Shen Choo and Han Tihlung before the magistrates, on account of implication in certain contests coming within the jurisdiction of this Board ? And how does it just happen that these two cases have occurred ?

“ ‘ Now, in the inquisition on the body of the deceased, it appeared from the evidence of the deceased's brother Pokang, and others, that his sister could write, and that the papers found are in her handwriting : these are manifest circumstances of Kingyuen having listened to engagements to receive bribes and to deceive. After several days'

examination, Kingyuen deposed, that Han Tihlung was an acquaintance of his, and that after the contest in which Han Tihlung was concerned, he had engaged Too Fangchow, the shoo-le of the Nganhwuy sze, to manage some law affair for him, and he had done so, but with regard to the circumstance of bribery, he would not depose anything. And, in his deposition on Shen Choo's case, he stated that he had never engaged the Yunnan sze to do anything for him. On strict examination of Shen Choo, he also stated that nothing of the kind had ever taken place. As this case regards an officer of rank receiving bribes, and engaging persons to manage cases for him it is not right to suffer any deceit or evasion. It is therefore our duty to state these circumstances clearly to your majesty, and request your majesty's will that Kingyuen the secretary be degraded, and that Shen Choo, the tsan-ling and official messenger of the ho-ke cantonment bordered yellow banner, be immediately confronted with Han Tihlung, and the other witnesses in the present case, and that, being examined with clearness and truth, the affair may be transacted according to the laws. It is for this that we respectfully present this statement.'

" ' His majesty's will has been received saying, " It is recorded." ' "

" The tithing system, which we have adverted to before, as forming a part of the theory of the patriarchal government in China, has long ceased to be acted upon strictly, as it has in England and must do, no doubt, as a system of police at least, in all very populous countries.¹ One of the censors memorialised the emperor in 1833 upon the subject, to request that it might be enforced again with greater strictness ; to which the emperor assented and lauded the system highly. The censor inferred the neglect of the system, from the circumstance of a contraband manufactory and an illegal religious association having existed several years in Peking, without being discovered ; as though the same inference might not be drawn from nearly every illegality, since it must needs happen in, and involve the responsibility of, some one tithing of the inhabitants.

" After the specimens exhibited of the inferior magistracy and police of the province in which the capital is situated, we are prepared to find similar, if not worse abuses, in the other provinces. Such as that for instance complained of by the governor of Yunnan and Kweichow in October 1817, in the case of a magistrate of a large district, who connived at the extortions and oppressions of the inferior officers of his court, which caused the death of several people and drove a Buddhist priest to kill himself in a fit of desperation.² Or that of the magistrate of Sanyang, in Keangnan, who, a few years earlier being ordered to distribute a large sum of money to the people in a season of distress, embezzled it. When another magistrate was sent to inquire into his conduct, he attempted to bribe him with 10,000 taels ; and failing in that, caused him to be murdered.³ Or that of certain

¹ *Evangelist and Miscellanea Sinica*, No. 4.

² *Indochinese Gleaner*, August 1818, p. 143.

³ *Ibid.* October 1818, p. 185.

official attendants, who examined a corpse, and gave in false statements ; the writers of the evidence and three magistrates, who were all implicated in a case of homicide mentioned in a *Pekin Gazette* of May 1821, as having been pending five or six years, without being able until then to discover the real murderer ; although fifty or sixty persons had been tried and tortured, until some of them even confessed to a crime of which they were not guilty.¹ Or the report of a censor in 1827,² on the subject of the want of diligence and truth in the magistrates of Keangnan ; where, in consequence of remissness or bribery, justice is not executed, nor the revenge of kindred satisfied. ‘ When the friends of murdered persons do,’ according to the censor, ‘ find their way to the capital to appeal, they are commonly remanded to the very same persons who have already done them an injustice.’ He instances some recent cases of false proceedings. In one instance a suicide by hanging was reported, when it turned out that the deceased had been poisoned. In another, a man wilfully murdered his own brother, and it was reported that his mother, in consequence of the deceased having misapplied her money, ordered another brother to beat him until he died. A third instance was that of a man having abused a boy, and afterwards murdered him, but the magistrate was bribed to report it as accidental drowning. In volume 1st, page 239, of *The Repository* will be found a very general charge against the provincial officers by a censor, and we shall have many other cases of injustice to notice in speaking of the courts of justice. In the meantime, we must inquire into the state of the magistracy in the province of Kwangtung, with which we are more familiar.

“ It should have been noticed earlier, perhaps, that the expositions of the censors, governors, and deputies, are made in accordance with section 171 of the code, and that they are punishable apparently under section 336, ‘ on false and malicious informations ’ for false accusations against each other, or against other officers ; their reports may nevertheless in certain cases be coloured somewhat highly, in order to gain the reporter the reputation of being a wakeful and diligent servant. It is necessary on this account to multiply our extracts applicable to each head, in order that they may illustrate and corroborate each other.

“ Le the governor of Kwangtung and Kwangse provinces, who is spoken of in a former number of this work,³ issued a justificatory proclamation about himself in 1826, which marks plainly that he considered himself and his viceregal court to be exceptions to the usual nature and practices of governors and their retainers. ‘ It is universally known,’ he says,⁴ where he has served, which is in every province of the empire, and especially in Canton, of which he had previously been fooyuen, ‘ that his practice is to attend to all affairs, whether great or small, himself ; that his heart and hands are pure

¹ *Indochinese Gleaner*, October 1821, p. 230.

² *Canton Register*, February 26, 1828.

³ *The Chinese Repository*, iv. p. 69.

⁴ *Malacca Observer*, December 5, 1826.

from bribes, and his friends honest men ; that all soothsayers, diviners, and idle artists, are banished from his presence.' He informs the public, that any who pretend to have undue influence and improper access to him, are impostors. He desires the people to seize such pretenders and bring them to him, instead of being intimidated by them. Having thus established his own claim to purity, the governor proceeds to correct abuses in others,¹ and in a long edict against gambling, he alleges that the inferior officers, soldiers, and police-men, not only do not apprehend people who keep gambling-houses or boats, but that they protect them.

" In the following year, he puts forth a still longer manifesto,² in which he enumerates several special abuses against the same class of persons. The first is, that clerks in public offices extort money, in which the magistrates combine ; another is, that these clerks originate criminal accusations against innocent people, in order to extort money from them, which in the slang dialect of the police is called ' planting a fir-tree.' There is, he says, a class of people who in connection with the police, institute accusations against rich and timid people, of keeping gambling-houses or brothels, or of harbouring thieves. They obtain a warrant to apprehend the accused, and fetter them perhaps in a boat, or shut them up in a room, where they are ill used in order to induce them to pay for their liberation. The ignorant and simple, adds the governor, being afraid to appear before a magistrate, submit to these exactions ; but a few have the courage to appear, when the accuser is not forthcoming, and the matter proceeds no further. Another abuse is, that the police, on receiving a warrant to summon witnesses, go in a sedan-chair with a number of attendants to deliver it, often to a great distance. They commence by demanding fees for meat and drink, and for payment of the chair-bearers, which is followed by a fee for the summons. If any resistance is made, the attendants commence breaking the furniture of the house, insult the females, and carry off the domestic animals in order to pay themselves. A fourth abuse arises out of the recovery of land from the beds of rivers by means of embankments. There is a class of country sharpers, says the governor, called, ' sand swindlers,' who in connivance with the clerks of public offices, raise litigations on false depositions, and so get the produce of the new lands, during the whole term of litigation, which lasts sometimes for ten or even a score of years. Another abuse arises out of the collection of the land tax. One detestable mode of extortion is, says the governor, for the collectors or their agents to wound their heads slightly and then to accuse others of resistance to the emperor's officers, refusal to pay the tax, etc. With respect to the police, the governor accuses them lastly of extorting money from the accused by torture and other means of annoyance, before bringing them up to the magistrate ; and this not only in weighty cases, such as murder and robbery, but also in questions of property,

¹ *Malacca Observer*, January 16, 1827.

² *Canton Register*, March 8, 1828.

marriage, etc. Sometimes they occasion the death of their prisoner, and then give out that he committed suicide or died suddenly.

"It would have been, it might be supposed, a more effectual remedy for the above abuses, to have put in force sections 360 and 296 of the code, touching 'impostors pretending to be officers of government,' and 'imprisonment of, and procedure against, unaccused and unimplicated persons,' with some other equally applicable laws, than to waste his rhetoric in pathetic appeals to the public. Unless, indeed, this proclamation is a mere form issued at given intervals, like that promulgated on November 11, 1827,¹ in the joint names of their excellencies, the governor and fooyuen, to order the civil and military officers of the province to put on their winter caps on the 13th instant.

"The self-laudatory edict seems, indeed, to be the preamble, both with the governors and fooyuens, to their redress of grievances on taking office. Ching, the fooyuen of Canton in 1822, 'commenced life,' according to his inaugural proclamation,² 'as a cheheen magistrate; and in the province of Canton, I the (fooyuen) served twenty years. I was removed to Shantung and to Honan; and I am now placed here as fooyuen, etc.' 'Music and women,' continues he, 'goods and gain, revelry and avarice, have no charms for me. My only constant, unremitted, heedful, anxious desire, (which I dare not decline to cherish), is that I may look on national affairs as if they were domestic affairs, and the affairs of the poor as if they were my own.' After much wholesome advice to the people, we find, as antithesis to the fooyuen's purity, that in Canton 'vagabond attorneys excite litigations, increase or protract them, in numbers infinite, and to periods interminable. The innocent are accused, and the utterly wrong become accusers; they find avaricious and cruel magistrates and fraudulent police extortioners. Disputes about marriages and lands are viewed by the magistrates as petty affairs, and are given to the management of underlings'; and by various forms of legal fraud and oppression, families are ruined, and even lives are lost, etc.

"Loo, the new fooyuen in 1829,³ contented himself with the boast that he was naturally economical and not at all addicted to extravagance: all the rice, fuel, vegetables, oil and salt, which he required, was ordered to be bought with ready money at the market-price. 'Therefore,' says he, 'if any servant (maepan or comprador) goes to a shopman, and using the fooyuen's name, endeavours to force a purchase below the market-price, or asks for credit, the shopkeeper is allowed to collar him and bring him for punishment to the fooyuen's office.'

"The fooyuen, similarly qualified, issue their proclamations also, in which they confirm the abuses enumerated by the governors or point out others. One of them in the early part of 1827⁴ comments on the proceedings of the police in executing warrants. In litigations

¹ *Malacca Observer*, August 12, 1828.

² *Transactions of the Royal Asiatic Society*, i. p. 44.

³ *Canton Register*, June 2, 1829.

⁴ *Malacca Observer*, September 25, 1827.

about marriages and lands, the police-runners proceed with a summons to seize the whole kindred of the litigating parties, and having bound them, they put them into what they call a fire room ; that is, an apartment flooded with water, which is raised to a steaming heat by flues, in which the prisoners are confined until the want of fresh air compels them to pay the imposed exactions. The fees for the sedan, food, etc., amount to tens, or hundreds, or thousands, of taels according to the wealth and number of the persons implicated. The fooyuen of Canton in 1831 reported to the emperor,¹ that in a single district of the province there were no less than a thousand cases of assault and wounding, the perpetrators of which had not been convicted : he requested that the district magistrate should accordingly be degraded.

“ The chefoo and cheheen, on whom the vituperations of the governor and fooyuen against inferior magistrates may be supposed to reflect, endeavour to pass the word by joining in the cry against the police. ‘ There are hard-hearted soldiers and gnawing lictors,’ says the Kwangchow foo of Canton in 1828,² ‘ who post themselves at ferries, or markets, or rove about the streets, to extort money under various pretexts ; or being intoxicated, they disturb and annoy the people in a hundred ways. Since I came to the present situation,’ adds the chefoo, ‘ I have repeatedly commanded the inferior magistrates to act faithfully and to seize such persons ; but the depraved spirit still prevails.’ At this stage in the descending scale of censure, the people begin, it would seem, to cry shame upon the magistrates themselves. The Kwangchow foo of 1833³ was placarded in the streets, and even against his own office, with accusations of improper conduct and bribery. The cheheen of Nanhae, nevertheless, in an admonitory edict which he put forth in 1829,⁴ against the cries of the people, lays much of the blame upon the police-officers, who, he says, connive at old and profitable offenders, whilst they implicate the young and comparatively innocent.

“ Lastly, the Heangshan magistrate issues a proclamation in 1829 against foreigners having horse races at Macao.⁵ ‘ I hereby issue a strict interdict,’ pronounces the magistrate of the heen, in which Macao is situated, ‘ and order all the barbarians of Macao to know that they must obey the laws of the celestial empire ; and must not any more run races near the Barrier, because it may lead to injury to the foot passengers, and cause disturbance. Let every one implicitly obey ; if any one presume to oppose, he will be seized and punished severely.’ As if to afford foreigners a practical commentary upon the efficacy of the local magistrates and their enactments, the tsotang or assistant to the cheheen, who presides over Macao itself, attended the very races against which the above proclamation was fulminated ; and to make the matter more decisive, he sat in the race-stand⁶ along

¹ *Canton Register*, November 1, 1831.

² *Ibid.* February 18, 1828.

³ *The Chinese Repository*, ii. p. 384.

⁴ *Canton Register*, October 3, 1829.

⁵ *Ibid.* June 2, 1829.

⁶ The writer was present in the race-stand.

with foreign ladies ; and exposed to the numerous Chinese foot passengers who risked their necks to see the sport. One of these same ladies went a few months afterwards to Canton, where her presence endangered the safety of the empire, according to the Chinese authorities ; and of the tea trade, according to British authorities ; but, most probably, of neither one nor the other, according to her own experience of the efficacy of the laws of China, and their effect upon its institutions and trade.

“ If further proof be required of the abuses and vexations which attend the administration of justice in China, it is to be found in the inhumanity and disregard of the life of others ¹ which is an infallible consequence in countries where every circumstance which brings a man into contact with the police involves him in some of the penalties of criminality. It is often affirmed that there is a Chinese law which implicates the by-stander in all cases of homicide, whether by accident or design. This is probably a mistake ; but enough has been shown of the nature of the police, and even of the presiding magistrates, to render obvious their desire to implicate all who can pay, in cases brought before them. When this disposition exists, there can be no difficulty in expanding the clauses of an ill-connected code of laws, so as to catch all who come within its influence. Section 301 of the Penal code, on ‘ neglecting to give information of, or to interfere and prevent a violent injury, which is known to be intended ’ ; or section 340, against ‘ exciting and promoting litigation,’ may answer equally well. The latter includes all ‘ cases of exciting and disposing others to inform and prosecute ’ ; but permits, nevertheless, that ‘ if anyone meets with a simple and uninformed person who is unable to state the injuries and injustice which he has suffered ; and consequently advises and instructs such person rightly and truly how to act upon the occasion, and moreover, without extenuating or aggravating the particulars, draws up an information for him in the legal and customary manner ; the giver of such assistance shall not, under these circumstances, be in any manner punishable.’

“ Now as the proof of, and decision upon, the complainant’s ability to speak for himself, as well as the propriety of the manner in which he is advised to speak by another, must rest with the magistrate before whom the case is brought, he will, if so disposed, find his own proof better than that which can be brought against him, and the decision rests entirely with himself. The complainant and his adviser, who may be considered to be anyone who was about him at the time of making the complaint, will have nothing, it is manifest, to trust to but the honesty of the magistrate, which we have seen to be in many cases more than doubtful. The same reasoning applies equally to implication in homicides, affrays, etc. We may thus account for the frequent instances by travellers all over Asia of the indifference shown by passengers to the sufferings by accident of other wayfarers.

¹ *The Chinese Repository*, i. p. 330.

In these countries the Good Samaritan is indeed a rare character, for he can act from no motive but benevolence ; since he must neither expect the praise nor censure of his countrymen, when he either assists or turns his head from the sufferer. Thus we are told by the elder Staunton,¹ who is usually the apologist for the Chinese, in his account of Lord Macartney's embassy, that on one occasion a number of Chinese were precipitated from a boat or stage into a canal, and that no one of the numerous spectators thought of giving assistance ; one boat, however, put off to pick up a hat !

“ The Nanhæ magistrate of Canton issued an order to the police in 1828² not to report suicides and accidental deaths to him. ‘ Let the friends of those,’ adds he, ‘ who throw themselves into the river or fall in by accident bury the corpse at once.’ A dead body is always thought a prize by the underlings, who on the one hand extort money from neighbours and friends, and on the other outrage humanity by exposing the corpse.

“ A censor, who was also superintendent of grain in the province of Shensi, reported to the emperor in 1830,³ that on one occasion he saw a corpse floating on the water, and on asking the people why they did not inform the magistrate, they replied : ‘ This is a common occurrence ; we always let the bodies be either buried in the bellies of the fishes, or devoured by the dogs ; for if we inform the magistrates they are sure to make the owner of the ground buy a coffin, and the clerks and attendants distress us in a hundred different ways. On inquiry,’ the censor goes on to say, ‘ I find that the place where the corpse was floating is not far from the public offices of the district ; how was it that the magistrates did not hear nor see anything of it ? What the people say, that they keep back information for fear of being implicated, is very probable. I hear that annually, during the fourth and fifth moons, when the heavy rains cause floods, many persons are drowned ; and that when the grain vessels arrive, and many traders are assembled together, the number of dead bodies is so much increased by the drowning of sailors, pedlars, etc., that one cannot bear to raise his eyes ; yet no one informs the magistrates that they may examine and bury the bodies. In your majesty's benevolent government the burial of the dead is a point of great importance ; but for such open barefaced offences as these to take place is shameful. Besides it is to be feared that wicked men perceiving that no inquiry is instituted will from covetousness, enmity, or other causes plan the death of others.

“ ‘ It is therefore my duty to request that your majesty will be pleased to issue an edict to the governor of Cheihle province, and the yin of the district of Shunteen, that they command the civil and

¹ Staunton's *Account of Lord Macartney's Embassy* : see also Barrow's *Travels in China*, 2nd quarto edition, p. 166, where several cases of inhumanity are recorded.

² *Malacca Observer*, March 11, 1828.

³ *Canton Register*, September 18, 1830.

military officers of these places, and the officers engaged in the transfer of grain, to give orders to the police that when they meet with the body of a drowned person they examine into the circumstances of his death and give information ; also to prohibit the clerks in the public offices and police to extort money under false pretences, and to order the coffins to be purchased at the public expense, that the people be not involved.' His majesty's reply was, ' that representation of the case is proper ; my will shall be issued on the subject.' We are not told what that will proved ; whether to make a new law, or to command the governor to order the heen magistrate to desire the clerk of his court to tell the police to do what the old law prescribed before."¹

In the following issue, the same contributor collects further cases illustrating the abuses which characterised the Chinese judicial administration of the period :

" ' All the subjects of the empire,' according to section 332 of the penal code, ' whether soldiers or citizens, who have complaints and informations to lay before the officers of government, shall address themselves in the first instance to the lowest tribunal of justice within the district to which they belong, from which the cognizance of the affair may be transferred to the superior tribunals in regular gradation.' ' It appears from this and other articles of the code,' adds the translator in a note to the foregoing section, ' that an appeal from the lower to the higher tribunal is allowed both in civil as well as criminal cases ; not, as has been supposed, in criminal cases only ; indeed there are no traces of any such distinction as that of civil and criminal jurisprudence of the Chinese.' That civil and criminal actions are tried at the same tribunals is apparent from section 341 of the code, which provides that : ' in all cases of adultery, robbery, frauds, assaults, breach of laws concerning marriage, landed property, or pecuniary contracts, or of any other like offences committed by or against individuals in the military class ; if any of the people are implicated or concerned, the military commanding officer and the civil magistrate shall have a concurrent jurisdiction.' What the particular jurisdictions of each magistrate are seems not to be well defined ; but it is probable that all criminal cases of importance are brought before the ngancha sze, and that weighty civil actions are laid in the fooyuen's court, both of these officers consulting in cases of difficulty with the governor of the province. The inferior magistrates have, no doubt, both civil and criminal jurisdiction within certain limits.

" Appeals as a last resort are sometimes carried to the emperor in person, but this is an incorrect practice ; they ought first to be laid before and opened by the general court of appeal in Peking.² Totsin and Changling, the last and present premiers of the emperor's

¹ " Notices of Modern China : Officers of the Inferior Magistracy and Police." *The Chinese Repository*, iv. pp. 214-229.

² For a description of this court see *The Chinese Repository*, iv. p. 145.

government, together with some other officers, were mulcted of their pay in 1830¹ for allowing two sealed petitions to be handed to the emperor in person, one by a soldier of the bodyguard, and another by an old man of Shantung province. The proceedings of the court of appeal are probably dilatory, for we find the emperor admitting in 1830 that it had been left too much to its own discretion ;² he ordered therefore that ordinary cases should be decided henceforth in fixed periods of ten or twenty days, or a month, and the law to that effect to be inserted in the code. The direct appeals to the emperor are made only perhaps by females and old persons who are incapacitated, according to section 339 of the code, from prosecuting informations, except in particular cases. Several petitions were thus presented to him in the year 1830 on his return from Tartary by parties who knelt by the roadside ; one was an unmarried woman, the other a lama priest :³ all the parties were handed over to the criminal court (probably the Toocho yuen) which accompanied the emperor.⁴ The young lady's case proved to be that her father, a Tartar, had been robbed of his land before his death by a powerful neighbour ; his widow sought justice, but was examined and insulted in open court, and in consequence hanged herself.⁵ The daughter now claimed her patrimony and revenge for her mother's death. We find nothing further upon the subject.

“ The emperor seems to have been very much troubled with these petitions in 1834, according to a memorial presented to him on the subject by certain captains of infantry, who have charge of the city gates and who are concerned in maintaining the peace of Peking ; whence we must conclude that the young ladies pass through their hands on their way to the emperor.⁶ They attribute the number of appeals ‘ to the obstinacy of many persons in pressing their cases,’ and also the remissness of the local officers, so that even women and girls of ten years of age take long journeys to Peking to state their cases there. Many of them present their accusations successively before the various officers from the district magistrate up to the judge of the province, but are always sent back again to the magistrate. ‘ The district magistrates,’ add the memorialists, ‘ are the proper officers to give the people redress ; why should accusations be brought before the pooching sze, ngancha sze, governor, and fooyuen ? Or did these officers examine the cases brought before them, or appoint others to do so, why should the case be referred to Peking ? The multiplicity of appeals is owing entirely to the negligence and remissness of the said officers, both high and low.’ The memorialists request therefore that his majesty ‘ will issue mandates to the governors and fooyuen of provinces, that whenever a case is referred to them from a lower court, whether it regard life or property, or petty disputes

¹ *Canton Register*, September 6, 1830.

² *Ibid.* October 2, 1830.

³ *Ibid.* February 15, 1830.

⁴ *The Chinese Repository*, iv. p. 149.

⁵ *Canton Register*, March 3, 1830.

⁶ *Ibid.* March 17, 1831.

about land, they shall either take cognizance of it themselves, or appoint some trusty officers to act for them, and not send the accusers back to the district magistrates. That if the accusation be found true, the district magistrates be punished for deciding unjustly ; if false, the accuser receive a punishment one degree greater than what would otherwise have been inflicted on the accused. That when an accusation is presented at Peking, examination be made, whether it has been brought before the governor and fooyuen of the province from which the accuser comes ; and whether they have taken cognizance of it. If it has not been brought before them, the accuser shall be punished ; if it has been brought before them, and decided unjustly against the complainant, the officers who so decided shall be punished, etc.'

"Now the punishments here recommended for injustice on the part of the magistrates, and false informations on the part of the people, are expressly provided for by sections 336 and 410 of the code. We must suppose therefore either that no provision had been made before at Peking, to ensure the execution of those laws in the provinces, or else that the emperor caused their captains of infantry to present a memorial to him, to furnish him with a text upon which to preach about the execution of laws, that he is unable to enforce effectually.

"Many of the appeals arise out of delay in obtaining justice, which may partly result from arrears of business in the courts ; for we find mention of promotion of an officer in the court of chancery of Shantung, in 1828,¹ who had decided three hundred cases, whether civil or military or both does not appear, within twelve months. In 1830² a magistrate of the province of Hoopoh was reported to have tried and decided upwards of a thousand cases within the year ; and another in Shantung had retried and decided upwards of six hundred cases in which the parties had appealed to superior courts. 'There is,' says the emperor on this last occasion, 'some merit in this activity ; but if so many undecided cases existed in two districts, what must be the number throughout the empire ?' He attributes the cause of an accumulation of judicial business to remissness and to unjust decisions, which make appeals necessary. 'The present system,' he adds, 'of rewarding vigilant (magistrates), and bringing general unproved accusations to me against the remiss, is utterly insufficient. Hereafter, let all governors of provinces, and fooyuen issue strict orders that litigations must be settled as fast as they arise. If accumulations occur, then proceed to severe measures against the magistrates, and report to me. The hope is, that in this way merit and demerit will be clearly distinguished, and all trifling and idle habits will be removed ; false imprisonment will cease, and magistrates will learn to be more careful.'

"The same neglect and injustice which is admitted to obtain in

¹ *Canton Register*, May 24, 1828.

² *Ibid.* June 15, 1830.

the courts of justice in cases when the parties may have an opportunity to appeal prevails also, it is to be feared, in the trial of capital crimes, when the sufferer can have little chance of appeal. 'The criminals in all the provinces,' says the emperor in 1827,¹ 'referred to the supreme court for the autumnal executions, have had their cases examined by the Board of Punishments (at Peking). The sentences passed in several of the provinces by the local governments have been reversed ; which indicated a serious want of attention to these great concerns on the part of the governors, judges, etc. By this neglect, some have been erroneously involved in the crime, and others allowed to escape.' Then follow the usual injunctions to better behaviour for the future. That the appeals to the emperor, or to the supreme court at Peking, do receive attention, is proved by their frequency. We will instance a few chiefly for the sake of the circumstances which attend them, which will assist to illustrate many other parts of the system, as well as that of appeals.

"In 1826² a native of Szechuen province went to Peking to complain in person against the provincial officers for neglecting to punish the murderers of his son. The son had gone to claim a debt from a neighbouring farmer, and not returning in due time, his sister and a cousin went to look for him ; they found his corpse suspended on a tree, and were informed by the farmer that their relative had hanged himself. The body, however, exhibited marks of violence, and some of the teeth had been knocked out, which the sister collected and carried to the magistrate. The father also claimed justice, but received instead a flogging in order to induce him to make a confession, which was dictated to him. He appealed to the governor, who sent him back to the magistrate, who then chained him, and extorted money before releasing him. In addition to these outrages, the murderer induced the father of his victim's wife to sell her to him. All this was stated in the appeal to the emperor, whose answer was 'record the memorial' ! which is all we know about it.

"A native of the province of Keangse appealed to the Tocha yuen or Consorate at Peking in 1829,³ on an atrocious case of burning, rape, and murder. The most opulent of the two conflicting parties had bribed the local magistrate and the police, to connive at and even assist in burning upwards of seventy apartments, killing the male inhabitants, and carrying off the females. The police accused the inmates of firing upon them in the execution of their duty. The court, in laying the case before the emperor, allow its atrocity, if it be true ; but we find nothing more about it. Another appeal was made in the same year by a native of the same province,⁴ in the case of a murder for which two men were at the time under sentence of death ; but who were not, according to the appellant, the real murderers, but were bribed to undergo the sentence of the law instead

¹ *Canton Register*, February 18, 1828.

² *Malacca Observer*, March 27, 1827.

³ *Canton Register*, July 16, 1829.

⁴ *Ibid.* July 2, 1829.

of them.¹ Another appeal was made by a native of Nganhwuy, against two magistrates who had tortured his father to death on a false accusation of debauching another's wife and murdering her husband. The charge was in this case substantiated, and a later gazette contains the sentence upon the magistrates to transportation to Ele, and hard labour.

"A man found his way to Peking the same year from the province of Fukeen to appeal against the magistrate and police of a district for injustice, in the case of his only son who had been shot by a hostile clan in the neighbourhood.² The clan, being wealthy, bribed the police with 2000 dollars of foreign money, and they would not seize the offenders. His Fukeen dialect was unintelligible to the court by whom he was examined.

"An appeal was made in the following year against the governor and other officers of Nganhwuy province,³ for not carrying into execution the sentence of death which had been passed upon two convicted murderers. Also by a widow of a military officer who had in his lifetime been a member of the Military Board, and had been honoured with a peacock's feather ; she suspected that her husband had come by his death unfairly, as proved to be the case, according to her story, on examination of the corpse, and she applied to the authorities in Szechuen province, where it occurred, to examine into the case ; but received only evasive replies.⁴ The court of appeal, to whom she represented the matter, applied to the Military Board (apparently), who returned to her for answer that the governor and commandant of the province averred that the officer had been accidentally smothered by charcoal smoke. But this statement was unsatisfactory to the supreme court, which ordered an especial commission for inquiry into the business. Here our information on this question stops. The widow admitted in her evidence that the commandant of Szechuen had offered her 4000 taels after her husband's decease, to enable her to return to her family. The translator closes the story by the following reflections. 'Tartars and Chinese of any consideration in the empire always had their remains conveyed home for interment. The distance of a thousand miles would be no objection. The indefatigable perseverance of Chinese widows in cases similar to the above, to obtain justice and revenge, is a striking trait in their character. Their fearless accusation of the highest authorities speaks well for their moral courage, and for the system of government.' The sentiment is true perhaps with regard to the widows ; but in this case, the 4000 taels looks like a bribe to induce the widow to abandon the prosecution ; in any event we cannot say much for a system of government, which requires so much exertion on the part of a widow to bring to light the circumstances which attended the death of a meritorious officer.

"In 1832 the Tooche yuen reported to the emperor the case of a

¹ For the mode in which this may be done see Le Comte's *Memoirs*, in the anecdote of Yang Kwangseen, London edition, 1698, p. 286.

² *Canton Register*, February 15, 1830.

³ *Ibid.* March 17, 1830.

⁴ *Ibid.* May 1, 1830.

widow of Fukeen province,¹ who after seeking redress in vain for four years, against the murderers of her only son, had sent her nephew to Peking to complain. The court was unable to obtain any information from the nephew on account of his speaking only a local dialect ; but it appeared by the mother's petition, that the robbers by whom her son was murdered were so powerful, that the police officers dared not attempt to seize them. We have shown elsewhere, that the lectures read by the emperor to his chief officers, are by them inflicted upon their inferiors, while the faults to which they refer are shifted by one party on to the other, but not redressed. So it is with appeals.

" Governor Le of Canton issued an edict in 1828 ² to forbid women to appeal to him, which we quote at length, because it explains why they are so prominent in petitioning.

" ' Le, by imperial appointment, the governor of the two Kwang provinces, strictly interdicts women from coming forth to present petitions, and old men being employed as witnesses. It appears that women are restricted to the inner apartments. Their duty originally was not of presenting accusations. And how can old men, declining in the evening of life, discharge the part of witnesses ? But in Canton there exists a very litigious spirit. Seditious characters are constantly thrusting themselves forward. Sometimes, as the laws cannot be executed upon old broken down people, they hire old men for witnesses ; sometimes, as the punishment of crimes cannot be inflicted upon women they instigate women to come forth, and send delicate, modest females to appear openly in the halls of justice. This custom must be overruled instantly. You magistrates of the chow and heen, must each exert himself, and exhort and lead the people. If your advice is not attended to, you must " level " (literally, " plumb with a line ") and control them. If women come forth to present petitions, you must examine their relations who have instigated them. If old people assist in giving evidence, you must examine both plaintiff and defendant, and find out where the bribery and dictation lies. Having detected them, inflict severe punishment. Do not pass it by lightly. If the people are impressed with a due dread of punishment, they will return to respectful habits. I wish all you magistrates of the chow and heen to act in conformity with my orders, and not to consider this as a matter of slight importance.'

" He issued another edict the following year,³ on occasion of setting out on a tour through the province, in which he says : ' that although in cases of murder, robbery, and crimes of similar heinousness, when justice has not been obtained, it is permitted to the aggrieved to kneel by the road-side, and present petitions ; still it is equally true that perverse persons try sometimes to implicate innocent parties in order to extort money, etc.' ' If people,' he adds, ' indulge themselves in making a noise, stopping my chair in order to force a petition into it, I will seize the presenter and punish him.' Governor Loo of Canton

¹ *Canton Register*, October 17, 1832.

² *Ibid.* August 9, 1828.

³ *Ibid.* June 2, 1829.

enacted likewise in 1833, that people must not pass by the inferior courts, to appeal to him ; except in important cases, such as associations of banditti, heresy, etc.

“ Against this manifest disposition to evade the importunities of those who are injured, we can adduce but one instance of a magistrate inviting complaints, which will be found in the 1st volume of *The Repository*, page 294. That many of the complaints made to the magistrate, and of the appeals from them to the supreme court at Peking, are frivolous and malicious, cannot be doubted ; still less can it be doubted, that the poor have little chance of making themselves heard when they appeal against the rich ; or if heard, that they often obtain any other result than to be sent back to the parties with whom their complaints originated. A case occurred in Canton in 1823, to which the foreigners were parties, which involved by implication the imputations above stated, as well as an application of the 336th section of the code, as recommended by the captains of the city gates of Peking. It is here stated from recollection ; for all the documents containing it were translated, and forwarded in that year to the East India Company by their servants in Canton.

“ In 1821 the crew of H.M. ship *Topaze* was engaged in an affray with the inhabitants of Lintin, an island at the mouth of the Choo keang. One or two of the Chinese were killed, which led to a long negotiation with the authorities, who demanded life for life, but never obtained it. Two years afterwards the brother of one of the men who were killed found his way, on foot as he said, to Peking, and complained to the supreme court that he could not obtain redress for his brother's death. Not daring to accuse the governor of Canton, or perhaps hoping to gain more by a rich hong merchant, he accused Howqua of having been bribed by the foreigners to hush up the affair. The emperor, to whom the case was referred, sent the poor man back to Canton, with an order to the governor to inquire into the matter. The governor did so, and reported that the accusation was false, and he went on to argue in the edict which was issued on the occasion, that the punishment for bringing a false accusation was by law one degree less than would have been awarded to the accused had he been guilty. Now according to law, thief-takers and policemen who connive with criminals to conceal crimes are liable to be transported 3000 *le*. The security merchants are considered, proceeded the governor, as police and thief-takers for the control of the foreigners. Had the principal security merchant been guilty he would, therefore, have been sentenced to banishment to 3000 *le* ; but since he is innocent, the accuser has rendered himself liable to a punishment one degree less, and he was sentenced accordingly to be banished to 2000 *le* distant. In consideration, however, of the aggravation, and of the distance which he had already travelled, the poor man was pardoned, and allowed to return home again.”¹

¹ “ Notices of Modern China : Appeals from the Inferior to the Superior Courts,” *The Chinese Repository*, iv. pp. 262-268.

APPENDIX XI

WILFUL MURDER IN CHINESE LAW

A case which occurred at the autumnal assize in 1833 well illustrates the severity of the Chinese law of homicide, the application of which to Europeans in China was steadily resisted. A husbandman named Wang-ke-fuh was accused of homicide. The facts were as follows :

“ On coming home from the field, he told his wife to boil some water and make him a cup of tea. She was busy at the mill, pounding wheat, and had not time to make him tea. At this he was vexed and reproved her harshly. But instead of submitting she answered again, and disputed with him. Wang-ke-fuh then got into a passion and ran towards her to chastise her. She ran to the cook-house, and he seized an earthenware teapot to throw at her head. She evaded it, and his old mother at that instant put forth her head to make peace and received a blow on her temples. He had all his life been a dutiful son, and he immediately rendered what assistance he could, and called for a doctor to his wounded mother ; but she died in consequence of the stroke. The kindred agreed to treat it as an accident, and prepared a coffin to inter the remains. But government heard of it and seized the son. He was tried and confessed all he had done ; but declared that there was no quarrel with his mother, nor any intention to hurt her. However he was sentenced to be cut to pieces.”

The case was subsequently referred to the emperor, and by him to the criminal board, who recommended that the punishment should be reduced to simple decapitation. The emperor thereupon rebuked his magistrates for their laxity.

“ They must not, he says, allow themselves to be deluded by the phrase ‘ you may save the living but cannot save the dead,’ and such like prattle, which is only used with the design of being lax and mitigating punishment. At the same time, he adds, there must be no intentional harshness and excessive severity. The grand object, which he bids them aim at, is neither to prevent the law nor connive at the crime, but let everyone bear his merited punishment, and so aid him in maintaining the impartiality of the law.”¹

¹ *The Chinese Repository*, ii. p. 576. The case is thus treated as one of deliberate murder.

APPENDIX XII

THE DEATH OF THOMAS BEALE (1841)

Thomas Beale, one of the oldest European residents in Macao, set out on December 10, 1841, for a walk along the beach, but failed to return. All traces of him disappeared, until his body was found, covered by sand, at Cacilha's Bay on January 13, 1842. It was buried in the little chapel of the East India Company. Hunter then records :

" Six months had come and gone after the funeral, when three Chinamen, humbly clad, sounded at the gate of his old residence and asked to see the comprador. On being admitted, one of them explained the object of their visit. They came from Fisherman's Point, which forms the northern boundary of Cacilha's Bay. It was occupied by these men, who fished and cultivated small patches of paddy ground. One of the men then went on to say : On the evening of the 28th day of the 10th moon (December 10th) last year, a foreigner came to our huts. He spoke the native dialect. He told us that on the beach at Cacilha's Bay a dead man was lying ; ' if he was not buried, we, being the nearest Chinese to it, the Mandarins would molest us, perhaps hold us responsible for his death, as you know they often do.' We one and all replied that our safety was not to go near it, and then with guiltless words we can confront the officers. The stranger said, ' But the spirit of the dead man, deprived of rest, will hover about you night and day so long as the body is above ground. It will haunt you, think of what I say.' We again, one and all, thrice replied, ' that being without sin in this matter, the gods will chase away the spirit ; we will not be haunted.' The stranger said ' The wretched spirit will bring you other ills. Your paddy fields will yield no rice. Your nets will catch no fish : you will be reduced to misery and want.' He knew our customs and our prejudices. We understood his words. We consulted together with fear, and decided to go and bury the body that evil might be warded off. We were gathering such implements as we had and were about to start ; it was then near the second watch (9 to 11). The stranger stopped us. ' No, not to-night,' he said, ' but at dawn of the day ; you can then see clearly, and may bury suitably in a deep grave ; is it not so ? ' ' Yes,' we answered, ' it is so.' He then placed in our hands this small packet, which you will notice has never been opened, ascended the hill and descended to the bay. We walked along the sands, when suddenly we came in sight of a dead body, completely clothed, lying on its back. Now, hurrying on, as we approached it we trembled with fear : we saw in it our visitor of the evening. We asked one another, was it his spirit ? We know they transform themselves at

will. Our limbs shook. Afang said 'Quick! there is the morning's light; if discovered *here* we shall have our heads cut off.' We dug a grave in the sand, placed the corpse within it, and filled it up with reverence. We again reached our huts, we burnt incense and dedicated a 'lob-chok'¹ to the spirit; we burnt fire-crackers, and thus removed all cause for further visits. With time we heard of a Macao foreigner being missed—it was spoken of in the market place. We said nothing for fear we might be taken and executed on suspicion. Now there is no longer anything said, the event is long past, we have come to return the packet with its contents as we received it. We cannot take a reward for such a work as we performed."²

APPENDIX XIII

THE LAW OF HOMICIDE IN OPERATION

In the issue of May 1834 a contributor to *The Chinese Repository* discusses the Chinese law of homicide and the manner of its application to Europeans as follows :

"The intercourse of Europeans and Chinese is rendered difficult on account of the principles of their education being dissimilar, and from their laws to punish violations of social order being different in the degrees of severity. These circumstances being really and truly various require on both sides an amicable consideration and accommodation. But there is another and more difficult obstacle to a kindly intercourse, arising from reciprocal pride and prejudice. In cases of homicide, this remark is strongly exemplified. We will explain it on the one side, and leave our Western readers, who are interested, to explain it on the other. The Chinese have a prejudice against all foreigners who approach them as equals, and their pride urges them to require the life of a foreigner, whenever the death of a native has been caused (no matter how) by his agency or instrumentality. The law of reason, of nature, and of nations does not admit of this. But still, the law of all civilised nations is tender of human life. From an ancient law, derived from the highest authority, in the universe, it is manifest, that man's blood, in which is his life, should not be wantonly spilt. The Chinese consider homicide as a debt; and a debt which can only be paid in kind, by the creditor. 'He that sheddeth man's

¹ A red candle.

² Hunter, *Bits of Old China*, pp. 76-78. The critic must make what he can of this story—it is inserted to illustrate the attitude of the Chinese towards cases involving magisterial intervention. Beale had been suffering from worry due to bankruptcy for some time, and had been in low spirits. The probable explanation is that he intended to commit suicide, gave the four dollars as a present to those who were to bury him in the sand, and chose this way of committing suicide in order to conceal the manner of his death.

blood, by man shall his blood be shed.' He who kills another must forfeit his own life. This is the general rule ; and in Chinese law the exceptions are few.

" In Chinese law, as in all human law, there is, as those who live by chicanery say, ' a glorious uncertainty.' Without entering into laws of property where the uncertainty is productive of profit to the lawyer, even in homicidal cases there is—inglorious uncertainty. Manslaying is seldom a simple and unmixed crime. When it is deliberate, and preconcerted by ' malice prepense,' the case is clear. In what we call ' wilful murder,' there is no hesitation about the mode, awful as it is, of punishing the offender. But the crime of causing death to a fellow creature, is not, perhaps in one case in ten, and it may be, for aught we know to the contrary, not one in a hundred, that of preconcerted murder. Momentary pride, passion, lust, intoxication, anger, avarice, frolic, etc., have been the incipient causes which occasioned the fearful result of a fellow creature's death. When the affray of the frolic began, there was no intention to slay. The death-blow came by ' chance-medley.' English law allows for this, and spares the offender's life ; Chinese law does not. ' There, there's the rub.' Most of the homicides committed by foreigners in China are of this class in which the law of Europe excuses the crimes in some degrees, so as to continue the life of the offender ; but in which the Chinese law will only grant a milder death.

" Having said so much we will give the Chinese legal distinction of homicide. They are called the *luh sha*, the six modes of killing man : 1. *Mow sha*, by previous design, whether an individual plots with his own heart, or with companions. 2. *Koo sha*, by instant design ; wilful at the moment, though unpremeditated. This is Chinese ' wilful murder,' but English ' manslaughter.' 3. *Gow sha*, by fighting in an affray ; chance-medley. 4. *He sha*, by dangerous sports ; such as boxing, cudgelling, etc. Duelling would of course be included, as a rather dangerous ' gentlemanly play.' 5. *Woo sha*, by mishap, hitting and killing the wrong person ; one with whom you had no quarrel, and to whom you intended no hurt. The persons found guilty of any of these crimes are by law punished with ' death,' some immediate ; others after imprisonment ; a respite which raises hopes, often not fulfilled. 6. *Kwoshih sha*, killing by misadventure, by pure accident : as a hatchet flying off from its haft. This is censured as carelessness, but not considered a capital crime.

" But Chinese law even in homicides depends much on the station or rank of the two parties. A master killing his slave and a slave killing his master are very differently punished. Even in a few cases of ' *se defendendo*,' making a justifiable homicide, much depends on the rank of the parties. For the Chinese jurists mix and blend the decisions of the Code, in complicated crimes, in a manner that is truly puzzling. As for example : in ordinary cases, if a woman kills a man who attempts to violate her person, it is justifiable homicide : but if the assailant were her husband's father, a person to whom she owes

great respect and submission, if she cause his death, she shall lose her own life. We have read recently of such a case ; in which the innocent woman was murdered by the law. If killed in resisting the police, it is justifiable homicide. An injured husband taking immediate revenge on the spot and killing both the adulterer and his own wife, is justifiable. Killing a man who enters clandestinely a house at night without cause, is justifiable.

“ The law says that foreigners in China killing each other may be punished according to foreign law ; but it does not willingly concede this to a foreigner killing a Chinese. There are some cases which occurred many years ago in Macao, quoted in the *Leuhle*, wherein the emperor Keenlung declared that in order to intimidate foreigners, the local government of Canton should require life for life, without quoting the extenuating circumstances which the Chinese laws admitted when natives only were concerned. From this view of the law and public feeling, homicides in China will long be a subject of difficult arrangement, between foreign and native authorities. Governor Loo, it is true, has recently declared, in reference to a case which is still pending, that assuredly there will be no forfeiture of life, because the affair emanated from no intention of the heart. We think it not unlikely that his excellency will contrive to render justice to the man and release him ; but if that man is a ‘ foreigner ’ and ‘ has in an affray caused the death of a native,’ according to the law of the land he has forfeited his life. The law is life for life.”¹

APPENDIX XIV

THE TRIAL OF KESHEN

Keshen (or Kishen), Viceroy of Chihle, was appointed as plenipotentiary to negotiate with Captain Elliot after the first Anglo-Chinese War. He had urged the necessity for moderation upon the Chinese Government, which had been thoroughly alarmed by the unexpected defeats of the Chinese forces by the British. The provisional agreement concluded by Keshen and Captain Elliot was repudiated on both sides, the Chinese Government holding that too much had been surrendered, and the British Government holding that not enough had been obtained (*e.g.* Hong Kong had not been fully and unequivocally conceded). On the failure of his policy, Keshen was degraded,

¹ “ Homicides in China : cases in which foreigners and natives are concerned, difficult to be adjusted ; *luh sha* or the six distinctions of homicide ; exceptions occasioned by the rank and situation of natives ; the usual exceptions not allowed to foreigners.” *The Chinese Repository*, iii. pp. 38-39.

his property was confiscated, and he was ordered to Peking to answer thirteen charges concerning his conduct of the negotiations. He was condemned to death, a punishment which was subsequently commuted to transportation. Later, he was restored to some of his forfeited offices.¹ The proceedings before the Supreme Tribunal at Peking appear below.

The royal prince Wo shih, and the minister Jinseaou and others, respectfully intimate, that having in council assembled come to deliberate decisions, they beg leave now to lay their report before the throne.

“On the thirteenth of the seventh month and twenty-first year of Taoukwang, his majesty's commands were received as follows: ‘Yinglung reports that Keshen has been placed under arrest, and brought to the capital, and has been delivered over to the Board of Punishments; and we appoint out princes royal, Juy tsin, Chwang tsin, Tingkeun, and Hwuy tsin, the great literary doctors, the high military officers of the privy council, and the vice presidents of the six Boards to assemble together and constitute a Board of Punishment to sit in judgement upon (Keshen's) affairs. Respect this.’

“Whereupon the Kwangchow foo and the adjutant general, Yinglung, having delivered Keshen up to the said Board, we the ministers and others in council assembled, brought him forth before us, and in regular order examined into each particular, to all and each of which he in person replied; and we memorialize and respectfully request the sacred glance to be cast upon the case, praying that torture may be added in the examination. It appears that Keshen last year was appointed to Kwangtung to examine into the affairs of the barbarians, and in consequence of there being no person who understood the barbarian language, as he passed through Shantung he wrote a letter to To Kwanpoo, the lieut.-governor, that he wished to take with him to Canton Paouchung, who understood the barbarian language, and who was of the same Canton village as the heen magistrate, Chaou Tszeyung. After his arrival at Canton, he first proceeded upon the principles of reason to deliver his lucid commands, after which the said barbarians demanded that a port of trade should be given them, but ere the negotiations were completed, they forthwith attacked the fort of Taekok and also surrounded that of Shakok. In consequence of this, Keshen attempted to rescue (the forts) from the dangerous position, but was destitute of plans, and became willing in behalf of the English to memorialize the emperor to give them the region of Hongkong as a place upon which to dwell. The said barbarians, intently scheming to have the rule of the place, immediately issued their false proclamations there, and spread out their tents.

“During the twelfth month the said barbarians wished to deliver up

¹ See further, Morse, *International Relations*, i. chap. x.

Tinghai, and they sent their barbarian ships to Canton to have an interview, while Keshen sent a letter to Elepoo, to go and receive it (Tinghae) back from the barbarian eye who was detained in Chekeang. In the present year, first month and fifteenth day, Keshen repaired to the Bocca Tigris to make examination, and on arriving at the offing of Tsze sze, the barbarian eye Elliot sought an interview in order to deliver back Tinghae, and being desirous of seeking commercial intercourse he presented his statement of regulations, several points of which were to be deliberated upon, many of them being troublesome matters connected with trade. A great many of these points too were so embarrassing that it was necessary that their contradictory bearing should be pointed out. At that time the Kwangchow foo, the military officers and the hong merchants, all were in waiting at the said place (Tsze sze), and Paouchung, thoroughly understanding the barbarian language, was therefore ordered to interpret. On the nineteenth day, Keshen having gone to the Bocca Tigris to inspect the forts, and when he had arrived at Tow wan, Elliot again came to seek an interview. He earnestly besought that the whole of Hongkong should be given to him, and also at the same time brought forward several points touching residence, and trade, to all of which he requested Keshen to affix his seals. But Keshen withheld assent.

“ On the twenty-eighth the said barbarians, hearing of the coming of our grand army, and supposing that so great a force must certainly be designed for attacking and exterminating them, were about commencing the attack themselves, and Keshen, being anxious for the safety of the Bogue, sent Paouchung to present a document in which it was stated to them that they could proceed to Hongkong to remain there for the time being, and ordering them to keep quiet, as the negotiations would be determined after an answer had arrived in reply to the clear memorial which had been made to the court. Paouchung was also ordered that if the barbarians did not manifest obedient tempers, then to take the document and bring it back. Paouchung, having seen the barbarians and finding their designs to be murderous and wicked, withheld the document.

“ On the first day of the second month, the barbarians attacked the fort of Shakok, and Keshen called troops to rescue it but could not. We, the ministers, have examined (Keshen) on the whole of the foregoing charges, and at the close of the third examination Keshen could only tremble with fear and acknowledge his own unpardonable crimes. At the time he and the barbarian eye held their negotiations, he without delay fully delivered Hongkong over to the English for the time, not daring to deceive them nor persevering to receive the things they had to offer, but his entire policy was decidedly bad, and he now requests that we, the ministers, would on his account memorialise and implore that the celestial favour might be manifested in inflicting upon him the heaviest punishment.”

Emperor's reply : “ On the sixteenth of the sixth month the imperial will was received as follows :

“ Let Keshen be remanded to the original judges of princes, magnates, and ministers, that assembled as a Board of Punishment they may determine the sentence for his crimes and report accordingly. Respect this.”

Further report of the council : “ In obedience to the above, we proceed to record our decision. Keshen when sent as a high commissioner to Canton to examine into and arrange the affairs of the barbarians should have applied the most attentive care and thorough ability and devised plans of the full settlement of every point. When the barbarian English became refractory towards his clear commands for arrangement, and manifested their wolfish dispositions, he ought straightaway to have memorialised the court, requesting troops to be prepared in order that at an early day they might be exterminated. But he incoherently presented them a place to dwell at, and for the time being gave Hongkong to them, which is the excuse they (the English) give for taking possession of it. In all matters where it was necessary to guard and watch, he made no previous preparations, and consequently the barbarians have attacked and destroyed the forts in succession, and the very important place (the Bogue) cannot now be guarded. He has throughout been guilty of the greatest political errors, and it is in accordance with the laws that his case should be inquired into and deliberated upon, for it is owing to his not making previous preparations that we have lost our important passes, the city of fortifications, and encampments. The law decrees imprisonment and decapitation, and we hereby sentence him to be beheaded, but to be imprisoned until after autumn and then to be executed.

“ Paouchung is a criminal who formerly resided with barbarians, and clandestinely acted as a compradore, but there are other and additional charges of lawlessness against him, and accordingly we distinctly sentence him to receive additional punishment.

“ All of us, the ministers in council assembled, having adjudged and deliberately settled the whole circumstances of the case, in accordance with the principles of reason, make our record and present it up to the throne that the imperial will may be received and recorded.”¹

APPENDIX XV

THE TRIAL OF ILIPU

Ilipu, Viceroy of Nanking, had negotiated with the British forces in Chekiang, and had, in consequence, restored order in his province. He was associated with Keshen's policy, and was accordingly involved in Keshen's downfall.² He was

¹ *The Chinese Repository*, x. pp. 590-592.

² See also Morse, *op. cit.* chap. x.

restored to office shortly after his degradation, and negotiated the Treaty of Nanking.

The hereditary prince Hoshih and the high minister Jinshow and others, kneeling respectfully lay their report before the throne :

“ In obedience to the imperial will, having assembled together to sit in judgment upon the affairs submitted to our deliberations, and having previously received the imperial instructions to institute an investigation in relation to Elepoo, who formerly held the office of governor of the two Keang provinces (Keangnan, *i.e.* Keangsoo and Ganhwuy and Keangse), in obedience thereto, we have had him brought before us in council assembled, and have ascertained by investigation the clear import of every circumstance ; and Elepoo, bowing to the ground and knocking his head, through alarm and fear lost all command of himself. It appears that Elepoo received an imperial commission last year to examine into and arrange the affairs of the barbarians in Chekiang ; and after he had arrived in the province he employed skilful spies, summoned together the bravest of the militia, collected provisions, selected the most able-bodied of the troops, and laid many plans for advancing upon and exterminating the enemy. Afterwards, he earnestly desired to order the said barbarians to repair to Canton there to wait until affairs could be examined into and arranged. To gain renown he concluded to offer them presents, and to order persons to proceed to them and clearly explain his commands, and at the same time to spy out their real strength. He deemed it proper to dispatch Changke, a person of his household whom he had promoted six degrees, with an official messenger Chin Chekang, over the sea (to Tinghae) to offer bullocks and sheep and various articles as presents, in return for which the said barbarians presented foreign broadcloths and various commodities. Elepoo feared to make an absolute refusal of the whole of the said articles, which would have struck the barbarians with suspicion and dread. But instead of being thus affected, they acted deceptively with regard to the time of their proceeding to Canton, and Elepoo under these circumstances received their presents. In reply to a memorial, touching the above, the imperial will was received, strongly enjoining that the articles be sent back. Elepoo in obedience thereto forthwith took the various kinds of presents, and ordered Chin Chekang to go and give them back to the barbarians, who would not receive them.

“ During the second month of the present year, the barbarians wishing to deliver back Chusan, Changke and Chin Chekang were sent to take one barbarian man and one woman to proceed and make known the strict injunctions, that when the city had been given up then all the barbarians should be delivered. The presents which they had previously made were all sent back, and having received them, they set sail for Canton. But Elepoo did not, in obedience to the imperial will, forthwith advance and slaughter, and make an immediate and thorough extermination of them. The whole of his proceedings being

improper and really marked by imbecility, and being unworthy to bear so high an office, he earnestly besought that his crime might be visited with heavy punishment. We, the ministers, having taken into consideration from first to last the whole of the evidence which he in person has laid before us, respectfully memorialise that in relation thereto the sacred commands may be recorded.

“ Respecting the above case of Elepoo, the imperial commissioner and high minister, his management of the barbarian affairs in Chekeang, and his not being able at once to recover Tinghae, the imperial will was repeatedly transmitted that he should proceed to exterminate the enemy ; but on every occasion he delayed and idly looked about him, and through excessive timidity did not go forward, and thus for every purpose he proved himself weak and useless. We therefore jointly solicit the imperial will, that Elepoo may be forthwith disgraced from the office he formerly held as governor of the two Keang provinces, and be sent to Ele, that by strenuous exertions he may make amends for his offences.

“ Changke and the official messenger Chin Chekang, who formerly proceeded to the barbarian ships as we have found by examination, only acted in obedience to Elepoo, and accordingly we acquit them of crime. Let Chin Chekang return to his military station, and let Changke be released.

“ That which your majesty’s ministers have adjudged of the cases brought before us in council assembled we now reverently report to the court, that the imperial will may be received and recorded.”

The imperial reply. His majesty’s commands have been received as follows :

“ In consequence of Elepoo having unsatisfactorily managed the military affairs of Chekeang, our imperial will was delivered to the princes and high ministers to adjudge the crimes of which he was guilty, and it appears that prince Jinchow and others in council assembled have now reported upon the above case. Elepoo, holding the office of high imperial commissioner for the arrangement of affairs in Chekeang, was unable forthwith to recover the captured territories. The imperial will was repeatedly transmitted to him, that he should advance and slaughter the enemy, yet on every occasion he delayed and idly gazed about, really proving himself to be imbecile and worthless. Let him be forthwith disgraced from the office he formerly held as governor of the two Keang provinces, and let him be sent to Ele, that by strenuous exertions he may make amends for his crimes, and be a warning to others. Respect this.”¹

¹ *The Chinese Repository*, x. pp. 633-635.

APPENDIX XVI

THE TRIAL OF QUAY-LUNG ¹

The trial and punishment of Quay-lung was merely an episode in the history of the White Lily Rebellion, lasting from 1796 to 1804.² The White Lily Society, or Pai Lien Chiao, was the oldest of Chinese secret societies, and had always been essentially political, though wearing a thin religious mask. The primary object of the Society was the expulsion of the Manchus, and the Society by 1796 had obtained a firm hold of the provinces of Hupeh, Shensi, Szechuan, and, to a lesser degree, of Honan. In February 1796 the rebellion broke out in Honan and Szechuan. In East Szechuan, under the leadership of Hsu Tlien-te, they drove out the local authorities, and plundered without restraint, without interference from the forces at the disposal of the Governors of Szechuan or Shensi. Generally speaking, the Imperial commanders in the disturbed areas proved themselves either incompetent or corrupt. As a result the rebellion spread almost unchecked. Towards the close of 1799, however, General Galehtengpo was given the supreme command of the Imperial forces in the field against the rebels, with General Teoutai as his Chief of Staff. Both generals were of outstanding ability, and together they prepared a plan for gradually closing in on the rebels, and so ultimately annihilating them. The success of the scheme depended, to a considerable extent, on the successful defence of Western Szechuan and Kansu against the rebels. This Quay-lung failed to do. As a result, the destruction of the rebels was only accomplished after General Teoutai had driven them out of the newly invaded provinces, and confined them to the Han Valley, the area which had previously been marked out as the scene of their destruction.

The period had been one of considerable turmoil. The seriousness of the rebellion had been increased by the indifference of a number of Imperial commanders to its progress. It was necessary, therefore, to recall those in authority to a proper

¹ See Staunton, *The Penal Code of China*, app. ix. p. 504. The names of the provinces have been put in the modern form. Personal names, with the exception of that of General Galehtengpo, have been left in the form Staunton gives.

² See Li Ung Bing, *Outlines of Chinese History*, pp. 466-477.

appreciation of their obligations, several high officials were therefore sacrificed, in a manner recalling the execution of Admiral Byng after the loss of Minorca, "pour encourager les autres." Among these was Quay-lung.

The edict recalls that a year previously Quay-lung had been appointed President of the Tribunal of Civil Affairs, and that in virtue of his office he had constant access to the Imperial Presence. Apparently he seized the opportunity to press his claims to high military command in the province of Szechuan, pointing out that he had served with distinction in a former rebellion, the suppression of which had proved an extremely difficult process. Moreover, the only reason for the continuance of the White Lily Rebellion, he declared, was the negligence and inactivity of the Imperial commanders. He therefore undertook, if appointed to a military command against the rebels, to overthrow them by an appointed day. "We were, however," the Imperial edict continues, "fully aware of the egregious vanity that prompted this declaration, and, therefore, did not at that time, judge it expedient to grant his request."

A short time afterwards Le-pao, Viceroy of Szechuan and Commander-in-chief of the forces, was guilty of criminal negligence in remaining inactive when he ought to have taken the field against the rebels. He was accordingly deprived of both offices, and committed for trial by the Supreme Court.¹ General Galehtengpo succeeded to his military command, and Quay-lung, on account of his previous experience, was appointed to the vacant Viceroyalty, without any express military command. Galehtengpo immediately took the field against the rebels, leaving to Quay-lung the reduction of the remaining bands of rebels scattered through the province. "If Quay-lung had felt himself unequal to a charge of such importance," the edict pertinently declares, "he ought to have prevented the departure of General Galehtengpo, or immediately have reported to us the real situation of affairs that we might have acted accordingly."

¹ On this point the Code declares: "When a certain number of military officers, together with the troops under their command, have been selected for the performance of any particular military service; as soon as the season approaches for the commencement of their operations, a day shall be fixed for their marching from their quarters, and after that period arrives any delay of a single day shall subject the offending party to a punishment of 70 blows; and the punishment shall increase at the rate of one degree for every further delay of three days of which any individual is guilty" (Staunton, pp. 215-216).

From his previous conduct, however, it is evident that Quay-lung was scarcely the sort of man who takes a modest view of his abilities, and Galehtengpo was allowed to depart.

Eight days were lost in inaction, the edict declares, on the pretext of providing clothes and accoutrements for his men.¹ His subsequent operations were so ineffective that the rebels were able to begin a new invasion of the threatened territories. Even yet, however, Quay-lung refrained from taking the field in person, preferring to direct the operations of three subordinate officers, one of whom was cut off by the enemy. This seems to have alarmed the Viceroy considerably, for he stood on the defensive, sending despatches to the capital announcing his intention of defending the banks of the River Tung-ho. The Central Government, though frankly dissatisfied with his conduct, contented themselves with a simple declaration to Quay-lung "that his life and fortune should depend upon the successful defence of the River Tung-ho"; adding that, "as a mark of our especial favour, although we degraded him to the third degree of rank, on account of his criminal negligence in permitting the rebels to gain a passage over the Kia-lin-Kiang, we, at the same time, assigned him the post of guarding the banks of the Tung-ho, to afford him an opportunity of redeeming his credit."²

¹ The Code deals with this point also: "When the troops of Government are on the point of taking the field upon any public service, if the supplies of arms, ammunition, stores, and requisite provisions of all kinds are not found to have been completed within the period previously determined, the officer of government who occasioned the delay, whether by a tardy transmission of the proper orders or a tardy execution of them, shall be punished with 100 blows. If any such delay or neglect shall occasion a deficiency in the aforesaid articles, when the troops are near to, and on the point of engaging the enemy; if the commanding officers of the troops who have received orders to co-operate on such occasions, lose time and wait the issue of events, instead of assembling their forces on the day, and at the place appointed; or lastly, if those who are entrusted with the orders or despatches for assembling troops, as aforesaid, do not execute their commission in due time; any error or failure in the military operations that may arise from those causes shall subject the offending parties to the punishment of death, by being beheaded after the customary period of confinement" (Section 204; Staunton, p. 215).

² Staunton, p. 506. Section 207 of the Code declares: "If any general or other commanding officer entrusted with the charge of a city, fortress, or other military station, when it is attacked or invested by rebels or insurgents, suddenly deserts and flies from his post, instead of effectually maintaining and defending it; or if such general or commanding officer, having neglected the previous adoption of proper measures of defence and security, suffers the enemy to come upon him unawares, and take possession of such city, fortress, or military station, he shall in either case suffer death, by being beheaded, after the customary period of confinement. . . . If the neglect of proper precautions on the part of the general, or of due communication of intelligence on the part of the scouts or advanced guards, is not

In spite of his previous misfortunes and the loss of Imperial favour, however, Quay-lung still appears to have been suffering from over-confidence, for when he was offered reinforcements from Honan, he rejected them. Shortly afterwards the rebels crossed the river unopposed, laid waste the district, and even threatened the provincial capital. The invasion was only stemmed when one of Galehtengpo's ablest lieutenants appeared, and drove them back over the Tung-ho, Quay-lung in the meanwhile contenting himself with assisting his immediate predecessor in the Viceroyalty, Le-pao, to defeat a few remnants of the rebel army, and then leading away his troops to another district. "If exemplary punishment is not inflicted upon this occasion," the edict asks, "what respect will hereafter be shown to martial laws, or submission to military discipline? The calamities which the inhabitants of the Western districts of the province of Szechuan have experienced are beyond the reach of calculation. Were we to persist in extending to Quay-lung our indulgence and compassion, the much injured people would look upon him with averted eyes, and lend to his words an unwilling ear; in short, the purposes of our administration would be defeated by committing it to such guilty hands."¹ The previous Viceroy was therefore reappointed in his place, with authority to preside over a tribunal of specially selected judges to try Quay-lung. "The result of their investigation of his crimes was a sentence of death by decollation. The princes of the blood and great officials of state were likewise convened for the purpose of investigating and deliberating upon this subject, and have come to a similar decision."²

attended with the loss of any fortress, or with any other consequences directly injurious to the forces of government, but still enables the insurgents to advance beyond their former limits and ravage the country and plunder the inhabitants, the individual whose offence occasioned such misfortunes, shall be punished with 100 blows, and sent into perpetual and remote military banishment" (Staunton, pp. 217-218).

¹ *Ibid.* p. 507.

² *Ibid.* This was in accordance with Section 6 of the Penal Code of China, which states: "When any officer of government at court or in the provinces commits an offence against the laws in his public or private capacity, his superior officers shall, in all cases of importance, draw up a distinct specification thereof for the information of the Emperor, and it shall not be lawful to proceed to try the offender without the express sanction of His Majesty. The trial and examination having taken place conformably to the Emperor's orders, His Majesty shall be again advised by a due report of the result, after which a rescript of one of the supreme tribunals shall be sufficient authority for passing and executing the sentence which the laws require" (Staunton, p. 9).

Quay-lung ought therefore to undergo public execution in the presence of the troops, but since the leaders of the rebellion are shortly to be tried and executed, the edict considers "that the execution of an officer of exalted rank, who had failed in the discharge of the duties of his station, might induce an association in the minds of the inhabitants, derogatory to that respect and submission which is due to all magistrates, from the people under their jurisdiction."¹ Quay-lung was therefore brought to Peking, and the Supreme Court was ordered to reconsider the case, in view of the fact that the prisoner had made an unreserved confession of his guilt, including the offence of killing an officer by a random shot from his bow, and concealing the crime by representing that the victim had fallen in battle.²

After sitting for two days the Supreme Court reported that Quay-lung ought to be punished with the utmost rigour, submitting also a list of precedents for Quay-lung's case. These read as follows :

" In respect to the case of the four officers, Ma-ur-kiun, Na-ching-chang, Quang-se, and Ya-ur-ho-shin, who were executed according to the rigour of the laws, on account of their misconduct at Ye-kin-chuen, in the exterior provinces ; we find, on comparison, that the conduct of Quay-lung is more seriously criminal. The statement of the trial of Lee-che-yao records that the sentence of instant execution by decollation was changed to a sentence of execution in the following autumn by the favour of our Imperial Father. The guilt of Lee-che-yao, in not taking measures against the rebels called Whey-fee, and permitting their leader Tien-fu to raise the standard of rebellion, and collect his adherents, before he proceeded with his army against them, may be compared with the timidity and irresolution of Quay-lung in seeking to avoid the rebels, and suffering them to ravage the country and ruin the inhabitants of Szechuan ; but still the crime of the latter appears of a deeper dye. With regard to the proceedings against Tang-yng-kiay, viceroy of the provinces of Yun-nan and Quei-chen, during the rebellion of the Mien-fee, we find that his circuitous marches in order to avoid an encounter with the enemy, and the deceptive reports which he addressed to court, in order to gloss over his misconduct, drew upon him a sentence of immediate death by decollation, according to the law against a general who injures the state by misleading his troops. By our Imperial Father's gracious favour he was nevertheless permitted to become his own executioner. The rank of Quay-lung corresponds with that of Tang-

¹ Staunton.

² According to Chinese law this was a crime redeemable by payment of a fine.

yng-kiay, each being entrusted with the government of a province. With regard to the circuitous marches which they practised in order to avoid the rebels and prevent a general engagement, they appear equally guilty. The conduct of Quay-lung, in reporting himself to be engaged in defending the bank of the Tung-ho, while actually seeking for a pretence to avoid the enemy, and his false statement of the circumstances of the death of the officer Ma-liang-chen, may likewise be placed in comparison with the deceptive reports presented to court by Tang-yng-kiay. The charges substantiated against Quay-lung, on the whole, fully justify the sentence which has been awarded against him ; but as some palliation may be conceived to arise from the circumstance of his voluntary offer to serve in the war against the rebels, we are induced to admit the case of Tang-yng-kiay as a precedent, and shall, therefore, spare to Quay-lung the ignominy of a public execution.”¹

Quay-lung was therefore allowed to commit suicide—

“ a sentence to which it would be absolutely impossible for us to admit the most trifling alleviation, without becoming ourselves guilty of dangerous and criminal partiality. It is our firm resolution never to suffer the military discipline and martial laws of this realm to be degraded or impaired by the licensed impunity of any magistrate, who fails to protect the people of the district under his authority from the cruelty and rapine of rebellious invaders.”

The two sons of Quay-lung, being necessarily involved in their father's guilt, were banished by the same edict.²

APPENDIX XVII

EXAMPLES OF THE DOCTRINE OF RESPONSIBILITY

A general similitude of the leuh, or original penal code of China, to that of the Visigoths or Balti in Spain, arising out of a parallel state of civilisation may be remarked. But “ while the Roman emperors were enacting such sanguinary statutes, as those of Arcadius and Honorius,

¹ Staunton, *op. cit.* pp. 508–509.

² Some interesting examples of the application of this doctrine of responsibility are recorded by a contributor to *The Chinese Repository* in 1836. An extract from this article is reprinted in Appendix XVII. The doctrine is not by any means extinct in China even to-day. It flourished throughout the nineteenth century, and even when foreigners were directly removed from its operation, it reacted upon them to their prejudice at times, as the extract from a British memorandum on the revision of the Treaty of Tientsin, reprinted in Appendix XVIII, illustrates.

which declares that the children of those convicted of treason shall be perpetually infamous, incapable of all inheritance, of all office or employment ; that they shall languish in want and misery, so that life shall be to them a burden, and death a comfort,"¹ the Goths enacted that, "all crimes be visited on the perpetrator alone : let the wrong die with him who has committed it, and let not the heir dread any danger from the deeds of his predecessor." The Chinese, on the other hand (although it was proposed, according to Du Halde, to change the law so long back as in the reign of the emperor Wante, 151 B.C.), preserve this blot in their code, in certain cases, to the present day ; for so late as 1828 the emperor decreed, as an amendment no doubt upon section 287 of the code, "that hereafter when in any case, three, four, or more persons in a family are murdered,² if it appears on the trial that the said family has no heir left, then the son or sons of the murderer, who may not have arrived at manhood, shall be presented to the keepers of the harem, and be emasculated ; and a report be made to the emperor. Let the Criminal Board enter this among the supplementary laws, and act agreeably thereto." And this new law was applied immediately in the case of a man³ who, having attempted the virtue of his neighbour's wife and failed, murdered the husband and two other members of the family, and left him without an heir. The emperor ordered the son of the murderer, a child of about ten years of age, to be delivered to the officers of the harem to be made an eunuch, and so by the *lex talionis*, to cut off the murderer's posterity also.

In September 1832 the Criminal Board at Peking⁴ expressed to the emperor a wish on their part, to alter the law⁵ which involves with a rebel all his kindred. In reply his majesty says that their recommendation is unsuitable. "Rebels are a virulent poison which infect a whole region ; and inasmuch as they involve officers, soldiers, and their families, their crime is supreme and their wickedness infinite ; if then their descendants are not all exterminated, it is an act of clemency." We are told⁶ that, in accordance with this law, the wife, daughters, and other female members of the family of an uncle of Changkihurh (Jehanguir), the rebel chieftain in Chinese Turkistan, were in 1827 or 1828 banished to the southern provinces of China and subjected to slavery ; while the men of the family were separated from them, and condemned to perpetual imprisonment. In 1832⁷ the families of seven Mohammedan begs of Turkistan, who had been executed for rebellion, were condemned to slavery. Three sons of the leader of the rebellion in the mountains which divide the provinces of Kwangtung, Kwangse, and Hoonan, his daughter, daughter-in-law, a brother, and two accomplices, were delivered over, in 1832, to the Criminal Board at Peking for trial : five of them were sentenced, in

¹ Tyler's *Universal History* (Family Library), iv. p. 80.

² *Canton Register*, February 2, 1829.

³ *Ibid.* May 2, 1828.

⁴ *Chinese Repository*, ii. p. 336.

⁵ See section 255 and appendix 23 of Staunton's translation.

⁶ *Canton Register*, May 10, 1829.

⁷ *Ibid.* August 2, 1832.

October, to the "slow and ignominious death of cutting to pieces," and their heads to be carried about among the multitude.¹

APPENDIX XVIII

THE DOCTRINE OF RESPONSIBILITY AND CHINA'S POLITICAL DECADENCE

In past times the rulers of China, pressed, no doubt, by the necessity of governing provinces stretching over half a continent, each larger, richer, and more populous than most of the kingdoms of the Western hemisphere, of governing them effectively, keeping order, raising a revenue and obtaining men for an army, with a central power of control over all, seem to have devised a system which with one advantage has one radical vice. Each province constitutes a separate State in its administration. It has, under a Governor-General, its own Budget, collects its own taxes, levies its own dues, remitting only a stipulated amount or proportion to Peking for the Public Service and the palace. It has its own militia, and pays all the civil and military employes within its limits, making Reports to Peking from time to time on all these heads. Each province, with its Governor-General and large body of Mandarins, is practically as independent in all that concerns its internal administration and Government as a Federal State in America. To compensate for this, and avert some of its dangers possibly, the Emperor can appoint and remove every official, from the Governor-General downwards, at his pleasure; and they are each and all, individually and collectively, held responsible for all that may happen within the limits of their jurisdiction, and this wholly irrespective of any fault on their parts. This sort of unlimited liability for the faults and crimes of others is the fruitful source of mischief. Individual crimes committed by people far removed, insurrections, failures of harvest, want of rain, foreign invasions, all alike are visited upon their heads, and they are made answerable in purse and in person for what no human effort or prevision could have prevented. The natural result has been the resort to means by the Mandarins for the evasion of such palpable injustice productive of a whole progeny of ever-increasing moral and social evils. Liability to punishment, not for malfeasance, but want of success in the prevention of crime or the apprehension of offenders, causes officers to be constantly on the watch to quash in the very beginning any proceedings against criminals which might bring the commission of offences under notice. Hence great impunity to crime, and often great judicial wrong, in the desire to get rid of witnesses or falsify evidence tending to bring crime to light,

¹ *The Chinese Repository*, i. pp. 381, 470. (Extracted from "Notices of China: Introductory Remarks on the Characteristics, the Present Condition and Policy of the Nation—The Penal Code," *The Chinese Repository*, iv. pp. 17-29.)

and not seldom the perpetration of great enormities. The general depravation of all the fountains of justice and of the people themselves naturally follow. They see crimes continually connived at by authorities, and know it to be often perpetrated by them ; prisoners being starved and tortured to death, and others being precipitately executed under false charges, all with the same object, to avoid a responsibility which never should have been imposed. This violation of a fundamental principle of legislation, of dealing with every man according to his merits, is a political blunder, if it were nothing else, the effects of which are shown in universal corruption and falsehood. And this leaven works until it becomes the habit and tradition of the whole class of officials, and from them extends to the mass of the population. Public opinion, through persistence in a long course of wrong-doing, becomes demoralised. Bribery comes to be considered an essential part of the system of government, and inseparable from the administration of the laws, of which the Mandarins all take advantage. But this theory of ubiquitous and unlimited responsibility, irrespective of the merits or demerits of the individual officer, operates in another direction and, if possible, with still more fatal results during the present interregnum, as regards the foreign policy of the Government, and the initiation of any measures for the reform of abuses or bold innovations, such as the introduction of railroads. An Emperor alone can sanction any change in established laws and customs, without a liability to forfeit his head on a charge of treason. There is no Minister or officer so high placed that may not be subjected to this fate, as soon as the Emperor's majority is attained, simply as a consequence of any concession or privilege granted to foreigners, or even any innovation such as the forming of colleges, for the tuition of Western languages and science, the building of steamers, the working of mines, the laying down of railroads, etc.

(Inclosure 1 in No. 29. Memorandum on the present condition of the Chinese Empire and its Internal Administration, in connection with a Revision of Treaties.¹)

APPENDIX XIX

CHINESE PRISONS—A CHINESE DESCRIPTION

The following description, based upon a Chinese manuscript, reprinted in *The Chinese Repository* of November 1843, may be taken as describing Chinese prisons of the period, rather as it was hoped they might be than as they actually existed. It is, nevertheless, of interest :

“ In the city of Canton there are six jails : two belonging to the

¹ *Correspondence respecting the Revision of the Treaty of Tientsin*, 1871, p. 61.

magistracy of Nanhai ; two to the magistracy of Pwanyu ; one to the prefecture of Kwangchau ; and one under the control of the provincial commissioner of justice. Each of the five first specified comprises more than five mau, and is capable of containing more than 500 prisoners. The last-named one includes an area of more than seven mau, and is capable of containing more than a thousand persons : $6\frac{6}{10}$ mau, or Chinese acres, are equal to one English acre.

“ The inner wall of each jail is twenty feet high, which is surrounded by a second wall of the same height, leaving between the two a space of seven feet. In this space a mighty patrol is stationed to guard the prison. Beyond the outer wall, a circuit of seven more feet of ground is kept clear where a guard of soldiers remain day and night.

“ The principal jailer lodges at the front gate of the prison. Within this there is a second gate or door, over which, or on the top of it, a tiger's head is engraved. This leads into an open court—or tien-tsing—which takes up about one-fourth of the whole area of the prison, including one of its four sides. The remainder of the ground is occupied by the prisoners. Over the front gate and wall there is a roof, like that of a common house, descending on two sides. The part occupied by the prisoners is covered by a single roof, extending from the wall inwards to the tien-tsing or open court. The timbers, on which this roof rests, are laid so close to each other as to prevent the prisoners escaping between them in case of the tiles being broken away. An impalement of strong piles stretches along under the eaves of this roof, and so separated from each other that they admit the light and prevent all escape of the inmates. Into this open court there is only one entrance, which is closed up at night, confining the prisoners to their own compartments.

“ The space occupied by the prisoners is divided into several tens of cells, each impaled with strong piles, and spacious enough to contain three rows of men, when lying down to rest. At night each of these cells is partitioned off by boards, three or four feet high, thus giving a separate room for each of the three rows of men. This is done, in order to keep them in some measure separate, and to prevent fighting and quarrelling. The floors of the cells are of thick plank, raised about one foot from the ground. The floor of boards, however, does not extend to the piles, along each row of which a space about two feet broad is covered with stone. Upon this stonework the prisoners place their utensils used in cooking, prepare their food, wash, etc.

“ The prisoners are kept in irons, having rings upon their wrists, fastened together by an iron rod. A chain is put around their necks, and the end of it fastened to the handcuffs. This chain is so short that their hands cannot fall much below their breasts, and keeps them raised as if they were about to make a bow. In the daytime, one of their hands is released from the iron, to enable the prisoner to prepare and eat his food ; but at night it is always made fast in its place. Heavy irons are also placed on the prisoner's feet, united by a chain a foot long, thus allowing them to walk in a slow and hobbling gait.

“Formerly heavy stocks were furnished for each row of men, and at night every man was made fast therein by one of his legs. In this position he could scarcely move, and many of the prisoners died. In consequence of this the matter was represented to the emperor, who was graciously pleased to order the stocks to be disused, which had been done accordingly in Canton. But in the jails of some of the neighbouring districts they are said to be still used. This is the case in Tungkwan and Sanshwui.

“The prisoners in the jail of the commissioner of justice are treated with more severity than those in the other prisons. Instead of the chain between the handcuffs and the neck, an iron rod is used, which prevents the moving of their hands up or down. Also additional irons are put on the ankles of these state prisoners. If they are strong and robust, and have been guilty of great crimes, three or four rings are placed upon each ankle. The number and weight varies according to the strength and character of the criminal.

“According to the regulations, established by law, each criminal should daily receive one catty and a half of rice, with 12 or 13 cash for the purchase of vegetables and fuel. But the jailer usually deals out to them not more than three-fourths of this quantity of rice, and only two or three cash. In the hot months of summer, a supply of common tea is provided daily for them, and placed in the open court, to which all have equal access. In the cold months of winter, instead of tea, they are furnished every morning, each with a cup of hot congee,—or rice boiled to a jelly.

“Clothing is also provided for the prisoners. Late in autumn a jacket, made of two thicknesses of cloth, is distributed to each one, who may chance to be in want of such, and also a blanket. Trousers and lighter jackets are likewise occasionally given. But all these are to be received as special favors, conferred by the officers under whose care the prisoners are confined. In summer the present of a fan is always made to each of the prisoners—it being indispensable to poor as well as rich.

“Besides these, usage has made it common to confer other little favours, which are distributed on joyous occasions, such as the birth of a son to the emperor, or to the governor of the province where the prisoners are lodged. On such occasions, flesh, fish, wine, etc., are distributed to the prisoners with a liberal hand.

“The Chinese system of subordination is carried out, and fully exhibited, even in their communities of prisoners—where, as everywhere else, there are headmen (or tau-mu) exercising authority with unmeasured rigor and severity. In the jails, these headmen may be one in ten or fifteen, and all the inmates of the prison are subject to their orders. This office of headman is either purchased with money, which is distributed among the jailers and the prisoners, or it comes to an individual by seniority, reckoning from the time of entering prison. When a new prisoner is brought in, these headmen give orders to the others to commence their diabolical operations, to

which there is no limit or bound, except in the pleasure of the headman. They commence on a gentle and easy scale, and proceed to those which are intolerable, the object being always to extort as much money as possible from every culprit. They will commence by hanging the man up by his heels, or by suspending him on a pole, passed under his handcuffs and feet-irons. They will try the strength of his loins by stretching him across a high stool. All ways and means, that seem likely to secure their end, are resorted to. When they fail by inflicting pain upon the body, they will starve their victim. If he is obstinate, and will not give money, they exhaust all their resources before they desist from their cruelties. If upon the first application he is found to have no money at hand, he must send letters to his kindred and friends to borrow something for him. If it is forthcoming liberally, that is an indication of an abundant store in reserve. Accordingly, more must be had, by fair means or foul, no matter which. To such an extent are these cruel punishments carried, that they usually far exceed those inflicted by the officers of government. The vulgar phrase for them is *ta shau chi*, *i.e.* 'burn paper.'

"Since writing out the foregoing from a Chinese manuscript, we have conversed with a 'jail bird,' who, from his own experience and observation in several tens of the prisons through which he had passed, told us about what he had both seen and suffered. On asking him if he knew the meaning of the phrase *ta shau chi*, he instantly took fire, and 'suing the action to the word,' gave what one might fancy no very bad representation of the sufferings endured by himself when a prisoner. According to this man's account there is a great diversity of tricks played upon the ill-fated victims who are lodged in the Chinese jails. *Tiyoh*, or hell, is the name commonly given to these places; and they doubtless bear as close resemblance to that place of torment as human device and cruelty can make them."¹

APPENDIX XX

THE THREE ORDERS IN COUNCIL, 1833

No. 1.—AT THE COURT AT BRIGHTON, THE 9TH DAY OF DECEMBER, 1833

Present: The King's Most Excellent Majesty in Council.

Whereas by a certain Act of Parliament, made and passed in the third and fourth year of his Majesty's reign, intituled "An Act to regulate the trade to China and India," it is, amongst other things enacted, that it shall and may be lawful for his Majesty, by such an order or orders, as to his Majesty in Council shall appear expedient and salutary, to give to the Superintendents in the said act mentioned, or any of them, powers and authorities over and in respect of the trade

¹ *The Chinese Repository*, xii. pp. 604-608.

and commerce of his Majesty's subjects within any part of the dominions of the Emperor of China ; and to make and issue directions and regulations touching the said trade and commerce, and for the direction of his Majesty's subjects within the said dominions ; and to impose penalties, forfeitures, or imprisonments for the breach of any such directions or regulations to be enforced in such manner as in the said order or orders shall be specified.

And whereas the officers of the Chinese government, resident in or near Canton, in the empire of China, have signified to the supracargoes of the East-India Company at Canton the desire of the government that effectual provision should be made by law for the good order of all his Majesty's subjects resorting to Canton, and for the maintenance of peace and due subordination amongst them ; and it is expedient that effect should be given to such reasonable demands of the said Chinese government ; now, therefore, in pursuance of the said act, and in execution of the powers thereby in his Majesty in Council in that behalf vested, it is hereby ordered by his Majesty, by and with the advice of his Privy Council, that all the powers and authorities which, on the twenty-first day of April one thousand eight hundred and thirty-four, shall by law be vested in the supracargoes of the United Company of Merchants trading to the East Indies, over and in respect of the trade and commerce of his Majesty's subjects at the port of Canton, shall be, and the same are hereby vested in the superintendents for the time being appointed under and by virtue of the said Act of Parliament ; and that all regulations which on the said twenty-first day of April one thousand eight hundred and thirty-four shall be in force touching the said trade and commerce, save so far as the same are repealed or abrogated by the said Act of Parliament, or by any commission and instructions, or Orders in Council, issued or made by his Majesty in pursuance thereof, or are inconsistent therewith, shall continue in full force and virtue ; and that all such penalties, forfeitures, or imprisonments as might, on the said twenty-first day of April one thousand eight hundred and thirty-four, be incurred or enforced for the breach of such then existing regulations, shall henceforth be, in like manner, incurred and enforced for the breach of the same regulations, so far as the same are hereby revived and continued in force as aforesaid ; and that all such penalties, forfeitures, or imprisonments, when so incurred, shall be enforced in manner following, that is to say, either by such ways and means by which the same might, on the said twenty-first of April one thousand eight hundred and thirty-four, have been lawfully enforced, or by the sentence and adjudication of the court of justice established at Canton aforesaid, under and in pursuance of the said Act of Parliament.

Provided also, and it is further declared, that the regulations herein contained are and shall be considered as provisional only, and as intended to continue in force only until his Majesty shall be pleased to make such further or other order in the premises, in pursuance of the said Act of Parliament, as to his Majesty, with the advice of his

Privy Council, may hereafter seem salutary or expedient, in reference to such further information and experience as may hereafter be derived from the future course of the said trade :

And it is hereby further ordered, that the said superintendents shall compile and publish, for the information of all whom it may concern, the several regulations hereby established and confirmed as aforesaid ; and that such publication, when so made with the authority of the said superintendents shall, for all purposes, be deemed and taken to be legal and conclusive evidence of the existence and of the terms of any such regulation :

And it is further ordered, that the said superintendent shall, on the arrival of any British ship or vessel at the port of Canton aforesaid, cause to be delivered to the master, commander, or other principal officer of such ship or vessel, a copy of such regulations ; and that every such master, commander, or other officer, together with every other person arriving in or being on board any such ship, shall be bound, and is hereby required, to conform himself to such regulations :

And the Right Honourable Viscount Palmerston, one of his Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

C. C. GREVILLE.

NO. 2.—AT THE COURT AT BRIGHTON, THE 9TH DAY OF DECEMBER, 1833

Present : The King's Most Excellent Majesty in Council

Whereas by a certain Act of Parliament, made and passed in the third and fourth year of his Majesty's reign, intituled "An Act to regulate the trade to China and India," it is, amongst other things, enacted, that it shall and may be lawful for his Majesty, by any such order or orders as to his Majesty in Council shall appear expedient and salutary, to create a court of justice, with Criminal and Admiralty jurisdiction for the trial of offences committed by his Majesty's subjects within the dominions of the emperor of China, and to appoint one of the superintendents in the said act mentioned to be the officer to hold such court, and other officers for executing the process thereof ; now therefore, in pursuance of the said act, and in execution of the powers thereby in his Majesty in Council in that behalf vested, it is hereby ordered by his Majesty, by and with the advice of his Privy Council, that there shall be a Court of justice, with Criminal and Admiralty jurisdiction, for the purposes aforesaid, which court shall be holden at Canton, in the said dominions, or on board any British ship or vessel in the port or harbour of Canton, and that the said court shall be holden by the Chief Superintendent for the time being appointed, by his Majesty under and in pursuance of the said Act of Parliament :

And it is further ordered, that the practice and proceedings of the said Court upon the trial of all issues of fact or law to be joined upon any indictments or informations to be therein brought or prosecuted,

shall be conformable to and correspond with the practice and proceedings of the Courts of Oyer and Terminer and Gaol delivery in England, upon the trial of such issues in such courts, so far as it may be practicable to maintain such conformity and correspondence, regard being had to the difference of local circumstances ; and especially it is hereby ordered, that every such trial of any such issue of fact, or of mixed fact and law, shall be by the said Chief Superintendent for the time being and a jury of twelve men, and that upon every such trial the examination of witnesses for and against the party or parties charged shall take place *viva voce* in open court, and that the sentence or judgment of the said court upon every such trial, founded upon the verdict of such jury, shall be pronounced in open court by such Chief Superintendent, as the presiding judge thereof.

And whereas it will be necessary to frame and prescribe rules of practice and proceeding to be observed upon all such prosecutions, in order to ascertain how far the same can be brought into conformity with the practice and proceeding of his Majesty's courts of Oyer and Terminer and Gaol delivery in England, and how far it may be necessary to deviate from such practice and proceeding by reason of the differences of local circumstances ; it is, therefore, further ordered, that such Chief Superintendent for the time being shall be, and he is hereby authorised from time to time, but subject to the provisions aforesaid, to promulgate all such rules of practice and proceeding as it may be necessary to adopt and follow ; upon, or previously to, the commitment of any person to take his trial in the said court, and respecting the taking of bail for the appearance of any such person at such trial, and respecting the form and manner of preferring and finding indictments, and of exhibiting criminal information against any persons charged with any crimes or offences before the said court ; and respecting the manner of summoning and convening jurors for the trial of such indictments on information ; and respecting qualifications of such jurors and the mode of summoning and compelling the attendance of witnesses ; and respecting the process of the said court, and the mode of carrying the same into execution ; and respecting the times and places of holding such courts, and the duties of the respective ministerial officers attending the same, whom he is hereby authorized to appoint provisionally, subject to his Majesty's approbation ; and also respecting every other matter and thing connected with the administration of justice therein which it may be found necessary to regulate.

And it is further ordered, that all rules so to be promulgated as aforesaid shall be binding and take effect from the respective days of the dates thereof, but that the same shall, by such Chief Superintendent, be transmitted to one of his Majesty's principal Secretaries of State, for his Majesty's approbation or disallowance, and that any such rule shall cease to be binding, or to have any force or effect, from and after the time of which his Majesty's disallowance thereof shall be made known to such Chief Superintendent for the time being :

And it is further ordered, that a record shall be duly made and preserved of all proceedings, judgments and sentences of the said Court, to be by the Chief Superintendent specially charged with the performance of that duty :

And the Right Honourable Viscount Palmerston, one of his Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

C. C. GREVILLE.

No. 3.—AT THE COURT AT BRIGHTON, THE 9TH DAY OF DECEMBER, 1833

Present : The King's Most Excellent Majesty in Council

Whereas by a certain Act of Parliament, made and passed in the third and fourth year of his Majesty's reign, intituled "An Act to regulate the trade to China and India," it is, amongst other things, enacted, that it shall and may be lawful for his Majesty, by any such order or orders as to his Majesty in Council shall appear expedient and salutary, to give to the superintendents in the said Act mentioned, or any one of them, powers and authorities over and in respect of the trade and commerce of his Majesty's subjects within any part of the dominions of the Emperor of China, and to make and issue directions and regulations touching the said trade and commerce, and for the government of his Majesty's subjects within the said dominions :

And it is thereby further enacted, that it shall and may be lawful for his Majesty, by and with the advice of his Privy Council, by any order or orders to be issued from time to time, to impose and to empower such persons as his Majesty in Council shall think fit, to collect and levy from or on account of any ship or vessel belonging to any of the subjects of his Majesty, entering any port or place where the said superintendents, or any of them, shall be stationed, such duty on tonnage and goods as shall from time to time be specified in such order or orders, not exceeding in respect of tonnage, the sum of five shillings for every ton, and not exceeding in respect of goods, the sum of ten shillings for every one hundred pounds of the value of the same :

And it is thereby enacted, that the fund arising from the collection of such duties, shall be appropriated in such manner as his Majesty in Council shall direct towards defraying the expense of the establishments, by the said Act authorized, within the said dominions ; now, therefore, in pursuance of the said Act, and in execution of the powers thereby in his Majesty in Council in that behalf vested ; it is hereby ordered by his Majesty, by and with the advice of his Privy Council, that it shall be lawful for the superintendents, appointed by virtue of the said Act of Parliament, for the time being, and for any person or persons duly authorized by them respectively, to recover and receive from all masters or other chief officers, or commanders, of all ships and vessels belonging to any of his Majesty's subjects who may enter the port of Canton, or may be trading at that port, the sum or sums

of money following, that is to say, in respect to tonnage the sum of two shillings for every ton as per register of such ships and vessels, and so in proportion for any fractional part of a ton ; and in respect of goods imported and exported, except bullion, at and after the rate of seven shillings for every one hundred pounds of the value of the same.

And it is further ordered, that the value of the goods composing the inward cargoes of such ships or vessels shall be fixed by the current market prices of such goods at Canton aforesaid, exclusive of the import duty, and that the value of the goods comprising the outward cargoes of such ships or vessels shall be estimated by the current market prices at Canton aforesaid, of the articles composing the same at the period of shipment, exclusive of the export duties.

And it is further ordered, that if any difference of opinion should arise as to the market prices aforesaid, the same shall be determined and fixed by two indifferent British merchants or subjects residing at the place, one to be chosen and appointed by the said superintendents, or by the person or persons authorised by them respectively, and the other by the master of the vessel, or by the consignee or shipper of the cargo, which two persons previously to their entering into consideration of the subject referred to them, shall appoint a third person, being also a British merchant or subject, residing at the place, to be the umpire in the event of their disagreeing upon the point referred to them ; and in case the two persons so chosen shall not agree and award the same within seven days after such appointment, then such third person, so previously chosen and appointed, shall decide and determine the said current market price within the space of three days after the expiration of the seven days, unless it shall be otherwise mutually agreed upon between the said superintendents or person or persons, authorized by them respectively, and the consignee or shipper of the cargo, and such sum shall be paid in either case as shall be agreeable to this order.

And it is further ordered that all masters, commanders, or other chief officers of all British ships and vessels trading to or from the port of Canton aforesaid, and unloading or delivering the ship or vessel or any of the cargo there, shall within forty-eight hours after the arrival of such ship or vessel, deliver to the said superintendents, or to the person or persons authorized by them for that purpose respectively, a true manifest in writing, upon oath, specifying the particulars of the whole cargo of such ship or vessel, so to be unloaded or delivered, or of such part thereof as shall be unloaded or delivered there, and to whom consigned ; and likewise twenty-four hours before the said masters, commanders or other chief officers, require the outward clearances or passports for their said ships or vessels, they shall deliver to the said superintendents, or to the person or persons authorised by them for that purpose respectively, a true manifest in writing, upon oath, specifying the particulars of the whole cargo of such ship or vessel laden there, or of such part thereof as shall have been laden or received on board such ship or vessel in the said port

of Canton, which oaths the said superintendents, or person or persons authorised by them respectively, are and is hereby empowered and required to administer gratis upon request.

And it is further ordered, that all bills of lading of such ships or vessels shall specify to pay the said monies accordingly under the denomination of "Contribution as by China Trade Act, and the Order in Council thereupon issued," and the persons paying the same shall be reimbursed by the persons to whom the said goods shall be consigned, or who shall receive the same, or by their respective freighters ; and in case the master or commander of such ship or vessel shall neglect to specify the payment of the said monies in the bill or bills of lading, as aforesaid, he shall be answerable for the same.

And it is further ordered, that for the better securing and collecting the payment of the said monies herein directed to be levied for the purposes aforesaid, the said superintendents, or the person or persons authorised by them, shall, and they are hereby respectively authorised and required, to detain the clearances outward and all other papers of all such British ships or vessels as aforesaid, and not to give or deliver any dispatch or passport for any such ship or vessel until payment be made as required :

And it is hereby further ordered, that no such British ship shall be admitted to entry at any port in any part of his Majesty's dominions unless the master shall produce to the proper officers of the customs, or other proper officer, the said clearances so to be given on departure from the port of Canton or from any other port at which such duties as aforesaid ought to have been paid :

And it is further ordered, that all monies to be raised or received by the authority of the said act, and of this present order, shall be appropriated towards defraying the expenses of the said superintendents and of their establishments, and of the officers subordinate to them at Canton.

And the Right Honourable the Lords Commissioners of His Majesty's Treasury, and the Right Honourable Viscount Palmerston, one of his Majesty's principal Secretaries of State, and the Commissioners for the Affairs of India, are to give the necessary directions herein as may to them respectively appertain.

C. C. GREVILLE.

APPENDIX XXI

EXTRATERRITORIAL PROVISIONS OF THE TREATY OF WANGHIA, 1844

The articles relating to extraterritorial rights in the Treaty of Wanghia read as follows :

Article XVI.—The Chinese government will not hold itself responsible for any debts which may happen to be due from subjects

of China to citizens of the United States, or for frauds committed by them, but citizens of the United States may seek redress in law ; and on suitable representation being made to the Chinese local authorities through the consul, they will cause due examination in the premises, and take all proper steps to compel satisfaction. But in case the debtor be dead or without property, or have absconded the creditor cannot be indemnified according to the old system of the cohong so called. And if citizens of the United States be indebted to subjects of China, the latter may seek redress in the same way, through the consul, but without any responsibility for the debt on the part of the United States.¹

Article XXI.—Subjects of China who may be guilty of any criminal act towards citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China. And citizens of the United States who may commit any crime in China, shall be subject to be tried and punished only by the consul or any other public functionary of the United States thereto authorised according to the laws of the United States. And in order to the prevention of all controversy and disaffection justice shall be equitably and impartially administered on both sides.²

Article XXIV.—If citizens of the United States have special occasion to address any communication to the Chinese local officers of government, they shall submit the same to their consul or other officer to determine if the language be proper and respectful, and the matter just and right, in which event, he shall transmit the same to the appropriate authorities for their consideration and action in the premises. In like manner, if subjects of China have special occasion to address the consul of the United States, they shall submit the

¹ As in the case of the Treaty of Nanking, the Chinese version of this treaty was translated and inserted in *The Chinese Repository*. The translation of this article reads as follows : " Should Chinese merchants happen to owe money to the people of the United States, or should they defraud them of their property, the people of the United States may themselves go and sue for it ; the officers cannot be security for its recovery. If an accusation be lodged with the officers, the Chinese local officers, on receiving a communication from the consul, must immediately make equitable investigation and push the recovery of the debt ; if the debtor be already dead, and his property gone, or if the fraudulent villain have really escaped into concealment, and there be no traces left of him, the people of the United States shall not adhere to the old regulations, and require the hong merchants to make it good. If any people of the United States contract debts with and defraud Chinese merchants, then it shall be arranged according to this rule, and the consul also will not be security for its recovery " (xiv. p. 35).

² The translation of the Chinese version reads : " Hereafter should any Chinese have any quarrels, disputes, or get mutually involved with the people of the United States, the Chinese will be seized and examined by the Chinese local officers, and will be punished according to the laws of China. The people of the United States shall be seized and examined by the consuls and other officers, and will be punished according to the law of their country ; but it is requisite that both should in justice and integrity divide the question, and neither side cherish partiality, which would lead to quarrels " (p. 37).

communication to local authorities of their own government, to determine if the language be respectful and proper, and the matter just and right, in which case the said authorities will transmit the same to the consul or other officer for his consideration and action in the premises. And if controversies arise between citizens of the United States and subjects of China, which cannot be amicably settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction.¹

Article XXV.—All questions in regard to rights whether of property or person, arising between citizens of the United States in China, shall be subject to the jurisdiction and regulated by the authorities of their own government. And all controversies occurring in China between citizens of the United States and the subjects of any other government shall be regulated by the treaties existing between the United States and such governments respectively without interference on the part of China.²

Article XXVI.—Merchant vessels of the United States being in the waters of the five ports of China open to foreign commerce, will be under the jurisdiction of the officers of their own government, who with the masters and owners thereof will manage the same without control on the part of China. For injuries done to the citizens or the commerce of the United States by any foreign Power, the Chinese government will not hold itself bound to make reparation. But if the merchant vessels of the United States while within the waters over which the Chinese government exercises jurisdiction, be plundered by robbers or pirates, then the Chinese local authorities, civil and military, on receiving information thereof will arrest the said robbers

¹ The translation from the Chinese reads: "Should people of the United States in any important matters make complaints to the Chinese officers they must first petition the consuls and other officers, who will examine whether the words and phrases in the petition be clear and intelligible and the subject reasonable, after which they will at once transmit it to the local officers to examine into and arrange. Should Chinese in any important matters make complaints to the consuls and other officers, they must first petition the local officers, who will examine whether the words and phrases in the petition be clear and intelligible, and the subject reasonable, after which they will at once transmit it to the consuls or other officers to examine into and arrange. Should it happen that people of China and of the United States wrangle about any matter, and are not able to arrange it amicably, it will be necessary for the officers of both nations to make inquiry and equitably examine and decide the matter" (pp. 37-38).

² Translated from the Chinese: "Should people of the United States at the five ports of China be involved in disputes among themselves about property, it will be examined into and arranged by the consuls and other officers of their country. If people of the United States in China dispute and wrangle about matters with traders of other nations it must be arranged in accordance with the rules established by their respective nations, Chinese officers will make no inquiry whatever about it." There are important differences here. Personal rights are omitted in the first part (concerning citizens of the United States only) and disputes between them and other foreign traders only are contemplated. Disputes with foreign non-traders are not mentioned but they are included in the English version.

or pirates, and punish them according to law, and will cause all the property which can be recovered, to be placed in the hands of the nearest consul, or other officer of the United States to be by him restored to the true owner. But if by reason of the extent of territory and numerous population of China, it shall in any case happen that the robbers cannot be apprehended, and the property only in part recovered, then the law will take its course in regard to the local authorities, but the Chinese government will not make indemnity for the goods lost.¹

Article XXVII.—If any vessel of the United States shall be wrecked or stranded on the coast of China, and be subjected to plunder or other damage, the proper officers of government, on receiving information of the fact, will immediately adopt measures for their relief and security, and the persons on board shall receive friendly treatment, and be enabled to repair at once to the most convenient of the five ports and enjoy all facilities for obtaining supplies of provisions and water. And if a vessel shall be forced in whatever way to take refuge in any port other than one of the five ports, then in like manner the persons on board shall receive friendly treatment, and the means of safety and security.²

Article XXVIII.—Citizens of the United States, their vessels and property shall not be subject to any embargo, nor shall they be seized on forcibly and detailed for any pretence of the public service,

¹ Translated from the Chinese: "When merchant ships of the United States enter the five ports of China, and anchor there, they come under the control of the consuls and other officers in company with the captains of the vessels, China will have no control whatever over them. Should it happen that on the high seas other nations insult and injure traders of the United States, China cannot revenge it on their account. But if merchant vessels of the United States, when on seas within the jurisdiction of China, be plundered by pirates, the Chinese civil and military officers must, as soon as they hear it reported, make a strict seizure of the robbers, and punish them according to law. The recovered stolen goods, of whatever quality, must all be returned to the original owners. But the territory of China being vast and the people numerous, it is ten thousand to one but that the principal thief cannot be caught or there be thieves and no stolen goods, or the stolen goods may not be completely recovered, and the Chinese local officers must act as is separately provided for by law, and cannot make up or return the stolen goods" (p. 38). "It is ten thousand to one but that the principal thief cannot be caught" is an interesting interpolation for which there is no warrant in the English text.

² "If merchant vessels of the United States, when off the Chinese shore, meet with tempests, strike on rocks, get on shore, or meet with pirates so that the vessel be destroyed, the local officers along the coasts, on examination and knowledge thereof, must immediately set on foot measures for rescue, and devise means for showing increased compassion, so that they may reach their port and get repaired. In all buying of rice and provisions and obtaining fresh water the least opposition or hindrance must not be given. Should the said merchant vessel be wrecked on the outer seas and be drifted to the Chinese shore, as soon as the officers shall have made clear inquiries into it, they must also treat them all with soothing compassion, and arrange their matters securely." The Chinese text does not include warships of the United States.

but they shall be suffered to prosecute their commerce in quiet and without molestation or embarrassment.¹

Article XXIX.—The local authorities of the Chinese government will cause to be apprehended all mutineers or deserters from on board the vessels of the United States in China, and will deliver them up to the consuls or other officers for punishment. And if criminals, subjects of China, take refuge in the houses or on board the vessels of citizens of the United States, they shall not be harboured or concealed, but shall be delivered up to justice, on due requisition by the Chinese local officers, addressed to those of the United States. The merchants, seamen and other citizens of the United States shall be under the superintendence of the appropriate officers of their government. If individuals of either nation commit acts of violence and disorder, use arms to the injury of others, or create disturbances endangering life, the officers of the two governments will exert themselves to enforce order, and to maintain the public peace by doing impartial justice in the premises.²

APPENDIX XXII

EXTRATERRITORIAL PROVISIONS OF THE TREATY OF WHAMPOA, 1844

Article X.—Si des Chinois à l'avenir deviennent débiteurs de capitaines ou de négociants français et leur font éprouver des pertes par fraude ou de toute autre manière, ceux-ci n'auront plus à se prévaloir de la solidarité qui résultait de l'ancien état de choses ; ils pourront seulement s'adresser, par l'entremise de leur Consul, à l'autorité locale, qui ne négligera rien, après avoir examiné l'affaire, pour

¹ “ Merchant vessels and property belonging to people of the United States, which may be found at the five ports of China, may not be taken by force or intimidation by the local officer, such as laying embargoes on vessels for public use or otherwise. But they must be suffered quietly to carry on trade in order to avoid trouble and annoyance.”

² “ If among the people of the United States there be any on ship board who do not attend to their duty, and leaving their ship escape into the inner land to conceal themselves, the Chinese local officers will immediately depute police runners to seize and bring them to the consuls and other officers, for punishment. If any Chinese, having offended the laws, go to the houses and dwellings, and on board of the merchant ships, of the people of the United States, to conceal themselves, the Chinese local officers, on discovering it, will immediately address a letter to the Consul and other officers to seize and send them back. In either case, the least shelter or concealment must not be given. With respect to the merchants, sailors, and others of the United States, they will all come under the consuls and other officers, who will when necessary make examination and keep them under restraint. If the people of the two nations use force and make disturbances, or carelessly use fire-arms and wound men, so as to lead to fighting, killing, and other serious cases, the officers of the two nations must maintain the laws and severely punish them—there must not be the least partiality which would cause the hearts of all to be unsubmitive.”

contraindre les prévenus à satisfaire à leurs engagements, suivant la loi du pays. Mais si le débiteur ne peut être retrouvé, s'il est mort ou en faillite, et s'il ne reste rien pour payer, les négociants français ne pourront point appeler l'Autorité chinoise en garantie.

En cas de fraude ou de non-paiement de la part de négociants français, le Consul prêtera de la même manière assistance aux réclamants sans que, toutefois, ni lui ni son Gouvernement puissent, en aucune façon, être rendus responsables.¹

Article XXIII provides that Frenchmen and French sailors at the five ports may go abroad to take exercise, within certain prescribed limits, and then, in respect of the sailors, declares :

Quand des matelots descendront à terre, ils seront soumis à des règlements de discipline spéciale, qui seront arrêtés par le Consul et communiqués à l'autorité locale, de manière à prévenir, autant que possible, toute occasion de querelle entre les marins français et les gens du pays.

Si, contrairement aux présentes dispositions, des Français, quels qu'ils soient, s'aventuraient en dehors des limites ou pénétraient au loin dans l'intérieur, ils pourront être arrêtés par l'Autorité chinoise, laquelle, dans ce cas, sera tenue de les faire conduire au Consulat français du port le plus voisin ; mais il est formellement interdit à tout individu quelconque de frapper, de blesser ou de maltraiter en aucune manière les Français ainsi arrêtés, de peur de troubler la bonne harmonie qui doit régner entre les deux Empires.²

Article XXV.—Lorsqu'un citoyen français aura quelque sujet de plainte ou quelque réclamation à formuler contre un Chinois, il devra d'abord exposer ses griefs au Consul, qui, après avoir examiné

¹ " If in future any Chinese are in debt to French captains and merchants, no matter whether on account of owing (money) or of fraud, the Frenchmen will not, according to the old law, demand the same of the security merchant, but ought to report it to the Consul, that he may address himself to the local officers to investigate the matter, and they exert themselves to hold (the debtor) responsible for the legal payment. But if the debtor can either not be apprehended, or is no longer in existence, or has made a total bankruptcy, being without the means of paying, the French merchant will not ask the officers to make up (the debt). If a Frenchman cheats a Chinaman out of his goods or owes him (anything), the Consul will exert himself equally to recover the same. But the Chinese must not demand of the Consul, nor of the French Government to pay him." (Chinese version.)

² " Whenever they go ashore, there ought to be regulations for coercing them. These rules will be drawn up by the Consul and submitted to the consideration of the local officers, to prevent the said sailors from creating disturbance or strife amongst the natives. No matter who the Frenchman is, whoever goes beyond the space allotted, or to a distance into the interior, may be seized by the Chinese officers. But he ought to be delivered up to the keeping of the French Consul at the nearest port. The Chinese officers and people must not beat, wound, injure, or cruelly treat the French prisoner, to harm the friendship and peace between the two countries."

l'affaire, s'efforcera de l'arranger amiablement. De même, quand un Chinois aura à se plaindre d'un Français, le Consul écoutera sa réclamation avec intérêt et cherchera à ménager un arrangement amiable. Mais si dans l'un ou l'autre cas la chose était impossible, le Consul requerra l'assistance du fonctionnaire chinois compétent, et tous deux, après avoir examiné conjointement l'affaire, statueront suivant l'équité.¹

Article XXVI.—Si dorénavant des citoyens français dans un des cinq ports éprouvaient quelque dommage, ou s'ils étaient l'objet de quelque insulte ou vexation de la part de sujets chinois, ceux-ci seront poursuivis par l'autorité locale, qui prendra les mesures nécessaires pour la défense et la protection des Français. À bien plus forte raison, si des malfaiteurs, ou quelque partie égarée de la population, tentaient de piller, de détruire ou d'incendier les maisons, les magasins des Français ou tout autre établissement formé par eux, la même autorité, soit à la réquisition du Consul soit de son propre mouvement, enverrait en toute hâte la force armée pour dissiper l'émeute, s'emparer des coupables et les livrer à toute la sévérité des lois ; le tout sans préjudice des poursuites à exercer par qui de droit pour indemnisation des pertes éprouvées.²

Article XXVII.—Si, malheureusement, il s'élevait quelque rixe ou quelque querelle entre des Français et des Chinois, comme aussi dans le cas où, durant le cours d'une semblable querelle, un ou plusieurs individus seraient tués ou blessés, soit par des coups de feu soit autrement, les Chinois seront arrêtés par l'autorité Chinoise, qui se chargera de les faire examiner et punir, s'il y a lieu, conformément aux lois du pays. Quant aux Français, ils seront arrêtés à la diligence du Consul, et celui-ci prendra toutes les mesures nécessaires pour que les prévenus soient livrés à l'action régulière des lois Françaises, dans la forme et suivant les dispositions qui seront ultérieurement déterminées par le Gouvernement Français.

“ Il en sera de même en toute circonstance analogue et non prévue dans la présente Convention, le principe étant que, pour la répression

¹ “ Every Frenchman who harbours resentment or ill-will towards a Chinese ought first to inform the Consul thereof, who will again distinctly investigate the matter and endeavour to settle it. If a Chinese has a grudge against a Frenchman, the Consul must impartially examine and fully arrange it for him. But if there are any disputes which the Consul is unable to assuage, he will request the Chinese officer to co-operate in managing the matter and, having investigated the facts, justly bring the case to a conclusion.”

² “ If any Chinese of the five ports in future harm the French, insult or annoy them, the local officers will immediately put them down, and adopt measures for their protection. But if there are villains or disreputable people who wish to rob, destroy, or burn the French houses, factories, hospitals, and buildings they have erected, the Chinese officers will either make inquiries, or the Consuls will give information thereof, and then send their police to drive away the rabble, seize the offenders, and punish them severely according to law, making them in future responsible for the recovery of the stolen articles or a compensation.”

des crimes et délits commis par eux dans les cinq ports, les Français seront constamment régis par la loi française.¹

Article XXVIII.—Les Français qui se trouveront dans l'un des cinq ports dépendront également, pour toutes les difficultés ou les contestations, qui pourraient s'élever entre eux, de la juridiction française. En cas de différends survenus entre Français et étrangers, il est bien stipulé que l'Autorité chinoise n'aura à s'en mêler en aucune manière. Elle n'aura pareillement à exercer aucune action sur les navires marchands français : ceux-ci ne relèveront que de l'Autorité française et du capitaine.²

Article XXIX.—Dans le cas où des navires de commerce français seraient attaqués ou pillés par des pirates dans des parages dépendants de la Chine, l'autorité civile et militaire du lieu le plus rapproché, dès qu'elle aura connaissance du fait, en poursuivra activement les auteurs et ne négligera rien pour qu'ils soient arrêtés et punis conformément aux lois. Les marchandises enlevées, en quelque lieu et dans quelque état qu'elles se retrouvent, seront remises entre les mains du Consul, qui se chargera de les restituer aux ayants-droit. Si l'on ne peut s'emparer des coupables ni recouvrer la totalité des objets volés, les fonctionnaires Chinois subiront la peine infligée par la loi en semblables circonstances, mais ils ne sauraient être rendus pécuniairement responsables.³

Article XXXI.—S'il arrive que des matelots ou autres individus désertent des bâtiments de guerre ou s'évadent des navires de commerce français, l'Autorité chinoise, sur la réquisition du Consul ou, à son défaut, du capitaine, fera tous ses efforts pour découvrir et restituer sur-le-champ, entre les mains de l'un ou de l'autre, les susdits déserteurs ou fugitifs.

Pareillement, si des Chinois, déserteurs ou prévenus de quelque

¹ " If there is any strife between Frenchmen and Chinese, or any fight occurs in which one, two, or more men are wounded, and killed with fire-arms or other weapons ; the Chinese will in such case be apprehended by their own officers with all strictness, and punished according to the laws of the central empire ; and the Consul will use means to apprehend the Frenchmen, speedily investigate the matter, and punish them according to French laws. France will in future establish laws for the mode of punishment. All other matters which have not been distinctly stated in this paragraph will be managed according to this, and great or lesser crime committed by Frenchmen at the five ports will be judged according to French law."

² " All differences of Frenchmen in the territory of the five ports will also be settled by the French Consul. If a Frenchman has a quarrel with a foreigner, the Chinese officers will not interfere. Vessels within the territory of the five ports must not be meddled with by the Chinese officers, but the management will either fall to the Consul or to the captain himself."

³ " As soon as the civil and military authorities hear in the neighbourhood that a French merchantman has been robbed by Chinese pirates on the seas of the central land, they will with all severity seize them and punish them according to law. The plunder, no matter at whatsoever place it is seized, and under any circumstances, must be given back to the Consul to be restored to the agent. But if the pursuers cannot apprehend the robbers, or not obtain all the stolen goods, they will proceed according to Chinese laws in this matter, but no compensation will be made."

crime, vont se réfugier dans des maisons françaises ou à bord de navires appartenant à des Français, l'autorité locale s'adressera au Consul, qui, sur la preuve de la culpabilité des prévenus, prendra immédiatement les mesures nécessaires pour que leur extradition soit effectuée ; de part et d'autre on évitera soigneusement tout recel et toute connivence.¹

From these provisions it will be obvious that the extra-territorial stipulations of the French treaty were drafted with greater care and in greater detail than those of the English and American treaties ; whilst a comparison with the translation of the Chinese text reveals fewer discrepancies between the two versions, those which exist being unimportant.

APPENDIX XXIII

JURISDICTION ORDER IN COUNCIL 1843

Whereas by a certain Act of Parliament made and passed in the session of Parliament holden in the sixth and seventh years of Her Majesty's reign, intituled, "An Act for the better government of Her Majesty's subjects resorting to China," it is, amongst other things, enacted, that it shall be lawful for Her Majesty, by any Order or Orders, made with the advice of Her Majesty's Privy Council, to ordain, for the government of Her Majesty's subjects being within the dominions of the Emperor of China, or being within any ship or vessel at a distance of not more than one hundred miles from the coast of China, any law or ordinance which to Her Majesty in Council may seem meet, as fully and effectually as any such law or ordinance could be made by Her Majesty in Council for the government of Her Majesty's subjects being within the Island of Hong Kong. And whereas, by a certain other Act of Parliament made and passed in the session of Parliament holden as aforesaid, intituled, "An Act to remove Doubts as to the exercise of Power and Jurisdiction by Her Majesty within divers countries and Places out of Her Majesty's Dominions, and to render the same more effectual," it is, amongst other things, enacted, that it is and shall be lawful for Her Majesty to hold, exercise, and enjoy, any power or jurisdiction which Her Majesty now hath, or may at any time hereafter have, within any

¹ "When sailors have run away from French men-of-war or merchant vessels, the Consul or captain will give notice to the local authorities, that they may exert themselves in seizing and delivering them over to the Consul or captain. But if any Chinese criminals take refuge in a French dwelling, or hide themselves on board a merchant ship, the local officers will then send information to the Consul that, after having clearly investigated the crime, he may use means to seize and send him to the Chinese officers. No protection (to outlaws) ought to be given on either side."

country or place out of Her Majesty's dominions, in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by the cession or conquest of territory. And whereas Her Majesty hath power and jurisdiction in the dominions of the Emperor of China ; Now, therefore, in pursuance of the above-recited Acts, or either of them, Her Majesty is pleased, by and with the advice of Her Privy Council, to order and it is hereby ordered, that Her Majesty's Consuls and Vice Consuls resident within the said dominions, or such other persons as by warrant under the hand and seal of the Chief Superintendent of Trade of Her Majesty's subjects in China for the time being, shall be appointed to act provisionally as Consuls or Vice Consuls, shall severally in the districts within which they may respectively be appointed to reside, have and hold all necessary power and authority to exercise jurisdiction over British subjects within such districts as aforesaid, for the repression and punishment of crimes and offences by them committed within the dominions of the Emperor of China, and for the arrangement and settlement of all and all manner of differences, contentions, suits, and variances that may or shall happen to arise between British subjects and the subjects of the Emperor of China, and between British subjects and the subjects of any foreign Power, and which may be brought before them for settlement. And whereas by the above first recited Act, it is enacted that it shall be lawful for Her Majesty, by any commission or commissions under the Great Seal of the United Kingdom, or by any instructions under Her Majesty's Signet and Sign Manual, accompanying and referred to in any such commission or commissions, to authorise the Superintendent of Trade of Her Majesty's subjects in China (so long as such Superintendent shall also be Governor of the Island of Hong Kong), to enact with the advice of the Legislative Council of the said Island of Hong Kong, all such laws and ordinances as may from time to time be required for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Emperor of China, or being within any ship or vessel at a distance of not more than one hundred miles from the coast of China, and to enforce the execution of such laws and ordinances by such penalties and forfeitures, as to him, by the advice aforesaid, shall seem fit. And whereas Her Majesty has been pleased to grant such commission as aforesaid, to John Francis Davis, Esq. appointed by Her Majesty Superintendent of the Trade of Her subjects in China, or the Superintendent for the time being of such trade ; Now therefore Her Majesty is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, that Her Majesty's Consuls and Vice Consuls in China, or any persons acting provisionally as such Consuls or Vice Consuls as aforesaid, shall in the exercise of the jurisdiction granted unto them by this present Order, be governed by such laws and ordinances in that behalf as may be enacted in the manner and form aforesaid, by the Superintendent of the Trade of Her Majesty's subjects in China for the time

being, being the Governor of Hong Kong. And in further exercise of the powers in Her Majesty vested by the above recited Act for "Removing doubts as to the exercise of power and jurisdiction by Her Majesty within divers places out of Her dominions and for rendering the same more effectual," Her Majesty is pleased, by and with the advice of Her Privy Council, to appoint the Colony of Hong Kong as the British Colony wherein crimes and offences committed by British subjects within the dominions of the Emperor of China, which it may be expedient shall be enquired of, tried, determined and punished within Her Majesty's dominions, shall be so enquired of, tried, determined and punished, and that Her Majesty's Consuls, Vice Consuls, or other persons provisionally acting as such under warrant from the Chief Superintendent of British Trade in China, as aforesaid, shall have authority to cause any British subject, charged with the commission of any crime or offence, the cognizance whereof may at the time appertain to them, or any of them to be sent for trial to the said Colony of Hong Kong. And it is further ordered that the Chief Justice of the Colony of Hong Kong for the time being, or other person provisionally acting as such, shall, when duly required by the said Superintendent, proceed to the dominions of the Emperor of China, and shall have power and authority within the said dominions to enquire of, try, determine, and punish any crimes or offences, committed by British subjects within the said dominions. And the Right Honourable the Earl of Aberdeen, and the Right Honourable Lord Stanley, two of Her Majesty's Principal Secretaries of State, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

APPENDIX XXIV

THE INTERNATIONAL STATUS OF MACAO BEFORE 1887

The status of Macao was not definitely placed beyond the sphere of controversy before 1887. Until that date there was always the possibility of dispute between Great Britain and Portugal. In Morrison's "View of China" it is stated that Europeans had temporary shelters at Macao as early as 1537, but the Portuguese did not establish themselves permanently there until 1557. The Portuguese asserted that a "Grand Chop" or charter had been given at this time by the Emperor, but that it was subsequently lost, although it is exceedingly doubtful whether such a charter ever existed. For many centuries the tenure was clearly leasehold, rent being regularly paid to the Heungshan Hien until

1849. The Portuguese also claimed immunity from Chinese jurisdiction, but this was contested by the Chinese. In 1587 a Chinese official was commissioned to govern the city in the name of the Emperor ; he lived in Macao, and had jurisdiction in all cases involving Chinese. Later, the magistrate of Casa Branca acquired the jurisdiction, whilst the Heungshan Hien himself exercised jurisdiction as late as 1690. In 1744 a special official, the Tsotang, was appointed for Macao, and in 1800 he came to reside within the town. In 1749 the Portuguese refused to surrender certain alleged criminals, but a boycott was organised, and eventually a convention was signed, in virtue of which it was agreed that in cases of homicide the Chinese official at Casa Branca should go to Macao and act as coroner, submitting the evidence to Canton for final judgment. The Chinese also exercised fiscal jurisdiction at Macao.¹

In Chapter II, section 1, it was noticed that the Portuguese unsuccessfully resisted Chinese jurisdiction in the case of Francis Scott, an Englishman, who was charged with killing a Chinese at Macao in 1773, and that the Chinese tried and executed him. In 1785 the Portuguese again contested Chinese jurisdiction by denying all knowledge of a Chinese Christian, claimed by the Chinese, and alleged to have taken refuge in a convent at Macao, and the matter dropped. Again, in 1805, the Portuguese refused to surrender a seaman from a Portuguese ship, accused of homicide, and although the usual boycott ensued, the Portuguese persisted in their attitude, and eventually tried and executed the criminal. Another case of successful assumption of jurisdiction occurred in 1814 in the case of the two soldiers, who confessed to the murder of a sailor of H.M.S. *Doris*. They were sent to Goa for trial. In 1817, however, several sailors from the American ship *Wabash* were murdered or abducted by a party of Chinese, who were subsequently tried by the Chinese in the presence of the American Consul, the Portuguese, apparently, not being consulted. Again, in 1819, an affair in which a lascar had wounded a Chinese was settled privately by the agents of the East India Company without the intervention of the Portuguese. When Mr. Davis of the Company's factory was assaulted at Macao a year later, the Chinese magistrate tried and punished the culprit. In 1823, when a Chinese was killed by a Portuguese at Macao, the Portuguese

¹ Morse, *International Regulations*, i. pp. 44-45.

paid the relatives of the victim one thousand dollars to prevent a claim being lodged with the authorities, but two other cases of assaults on British subjects at Macao in the same year were reported to the Chinese, to be dealt with by them. Three years later the Portuguese again successfully resisted the claim of the Chinese for the surrender of a Timor slave accused of homicide. Again, in 1829, the Portuguese assumed jurisdiction over a British subject accused of assaulting a Portuguese officer; but in two cases of assault by Chinese upon British subjects at Macao in 1832, the Chinese assumed jurisdiction without opposition.¹

From these cases it is clear that the Portuguese only strenuously resisted Chinese jurisdiction in homicide cases where Portuguese subjects were accused. Cases involving foreigners and Chinese were settled without any attempt at interference on the part of the Portuguese. The Viceroy of Goa had ordered the Portuguese to resist Chinese jurisdiction as early as 1690, and this was repeated by King John V in 1712, while, in 1803, the Prince Regent of Portugal forbade a Portuguese accused of homicide to be surrendered to the Chinese, ordering him to be tried and punished by the Portuguese.²

The situation was complicated by the fact that all the foreign merchants at Canton were compelled to leave the city as soon as the trading season was over, and reside at Macao until the opening of the following season. Of these merchants, the British were the most numerous.

In 1802 a British force occupied Macao to protect it against a possible attack by the French. The Chinese protested against this, as an invasion of Chinese territory. News of the Peace of Amiens being received, the British withdrew. Another occupation occurred in 1808 and the Chinese again protested, threatening to stop the trade if the order to withdraw was not obeyed. After an unsuccessful effort on the part of Admiral Drury to obtain an interview with the Viceroy, Macao was evacuated.³ During the opium dispute the Chinese authorities closed Macao to the opium trade, and in 1839, following the withdrawal of the British from Canton and their settlement in Macao, the Imperial Commissioner Lin ordered all supplies to British subjects there to be

¹ For other cases illustrating the same point, see Chapter II.

² *The Chinese Repository*, i. p. 402.

³ Morse, *op. cit.* p. 44.

cut off, and also commanded all Chinese at the port to leave British service. He also instructed the Governor of Macao to expel the British, and eventually the Governor was compelled to inform them that he could no longer guarantee their safety. The British thereupon withdrew.

Following the conclusion of the Treaty of Nanking, the question of jurisdiction at Macao arose again. The Chief Superintendents had been granted authority to exercise jurisdiction there in 1836, and by Consular Ordinance No. 1 of 1844 Macao was declared to be within the jurisdiction of the Supreme Court of Hong Kong, as the court for British subjects in China, and when the ordinance had been confirmed by the Home Government, the Superintendent of Trade instructed the British Agent at Macao (there was no consul) to protest against the jurisdiction of the Portuguese, if any British subject was tried by the Portuguese courts. Subsequent Ordinances and Orders in Council (notably the one promulgating the Consular Code of 1853) sustained the view that Macao was part of the dominions of the Emperor of China. On the other hand, the Portuguese Government had protested against the very first ordinance of the Legislative Council of Hong Kong, including Macao within the dominions of the Emperor of China, but the British Government replied that "two independent sovereignties could not exist in the same place, and the Portuguese had avowed their inability to afford protection to British subjects at Macao."¹

An interesting case on the point arose in 1849. On June 7 Mr. Summers, an assistant teacher at a Free School in Macao, declined, when requested, to make an obeisance on meeting a religious procession at the festival of Corpus Christi in the town. He was consequently arrested and confined for the night in the guard-house; the following morning, pending his trial, he was removed to the Common Gaol. Captain Keppel, of H.M.S. *Meander*, then at Macao, heard of the affair, and called on the Governor and demanded his release. This was refused, as was also a subsequent request in writing, whereupon Keppel mustered a barge's crew, marched to the gaol, and released Summers, in spite of resistance by the Portuguese, resulting in one Portuguese soldier being killed and three wounded. The affair was subsequently taken up by the Portuguese Ambassador in London,

¹ Morse, *International Relations*, i. p. 338.

to whom Lord Palmerston replied that jurisdiction over British subjects in Macao belonged to the English Government, having been conceded by the Chinese Government (which had previously exercised it) by the Treaty of Nanking. The matter was of some practical importance, since, during the previous ten years, more than one British subject had died in the very gaol in which Summers had been confined. Ultimately, an apology was made to the Portuguese Government, Captain Keppel was reprimanded, and the widow of the soldier who had been killed received a pension.¹ In the same year, in two cases arising before the Supreme Court of Hong Kong, *Robertson v. McSwiney*, and *Cum Cheong v. McSwiney*, the defendant established the fact that he was a merchant residing principally at Macao, and the Chief Justice dismissed the case, holding that Macao was not within the jurisdiction of the Supreme Court of Hong Kong.² On the other hand, in a despatch from the Foreign Office regarding the validity of marriages celebrated at Macao in 1858, it is stated: "With regard to the case (specially referred to) and to the validity of marriages celebrated by a clergyman of the Church of England, and not under the Act 12 & 13 Victoria, cap. 68, at Macao: if Macao is Chinese territory, and not a Portuguese possession, such marriages will be valid as being celebrated in China, a pagan country. If, however, Macao is a possession of Portugal, then it has a Christian law of marriage as its *lex loci*, and marriages of British subjects must, in order to be valid, be solemnized there either in accordance with such *lex loci* or with the provisions of the Act just mentioned" ³—the question being thus deliberately avoided.

In 1842 the Chinese High Commissioner, Kiyang, granted certain additional privileges to Macao, but refused, on request, to remit the annual rent. In 1849 Macao was made a free port, a proclamation of the Governor declaring that no duties were to be collected, and the Hoppo's customs houses were withdrawn from Macao to Whampoa, and they were followed by the Chinese merchants of the town. As a result the Governor declared that the landed property of Chinese inhabitants, withdrawing without licence, would be appropriated by the Government as abandoned. On August 22 Governor Amaral was murdered. Following this,

¹ Norton-Kyshe, *History of the Laws of Hong Kong*, i. pp. 246-248.

² *Ibid.* pp. 250-251.

³ *Ibid.* p. 466.

the Portuguese never admitted any Chinese rights over the peninsula.¹

Several articles of the Treaty of Tientsin (1862) between Portugal and China dealt with Macao, though the question of its status was avoided. The treaty was never ratified, however, and was therefore of no effect. The articles in question read as follows :

Article III.—The Governor-General of Macao, in his capacity of Plenipotentiary of His Most Faithful Majesty in China, may visit the Court of Peking every year should important affairs render it necessary.

Article IX.—His Majesty the King of Portugal will enjoin upon the Governor of Macao to bestow his most determined co-operation to avoid everything which might at that place be prejudicial to the interests of the Chinese empire.

His Majesty the Emperor of China may appoint, should he deem it convenient, an Agent to reside at Macao, there to treat of commercial affairs and watch the due observance of the regulations. This Agent, however, must either be a Manchu or a Chinese of the fourth or fifth rank. His powers shall be equal to those of the consuls of France, England, the United States of America, or of those of other nations who reside at Macao and Hong Kong and there treat of their public affairs, hoisting the flags of their respective nations.

Article XXI.—Chinese criminals seeking refuge in Macao, or on board Portuguese ships lying in its harbour, shall be given to the Chinese authorities upon their requisition and upon proof of their crimes. . . .

A final settlement was eventually reached in 1887. A Protocol signed at Lisbon on March 26 of that year reads :

Article 1st.—A Treaty of friendship and commerce with the most favoured nation clause will be concluded and signed at Peking.

Article 2nd.—China confirms perpetual occupation and government of Macao and its dependencies by Portugal, as any other Portuguese possession.

Article 3rd.—Portugal engages never to alienate Macao and its dependencies without agreement with China.

Article 4th.—Portugal engages to co-operate in opium revenue work at Macao in the same way as England in Hong Kong.

This Protocol was followed by a treaty, signed at Peking on December 1 of the same year, and ratified on April 28, 1888. Article II of this treaty states :

“ China confirms, in its entirety, the Second Article of the Protocol

¹ See further on this episode, Morse, *op. cit.* pp. 338–341.

of Lisbon, relating to the perpetual occupation and government of Macao by Portugal.

“It is stipulated that commissioners appointed by both governments shall proceed to the delimitation of the boundaries, which shall be determined by a special convention ; but so long as the delimitation of the boundaries is not concluded, everything in respect to them shall continue as at present, without addition, diminution, or alteration by either of the parties.”

Articles III and IV of the treaty confirm Articles III and IV of the Protocol. Macao is therefore a Portuguese colony owned by Portugal in full sovereignty.

The opinions of a British subject, with considerable practical experience of affairs at Canton and Macao, are perhaps worth recording :

“There is, however, one small Chinese district, ceded to the Portuguese by the Chinese, and which still remains in the possession of the crown of Portugal. The district alluded to is what is called the island of Macao, though Macao is, in fact, only a small district at the southernmost extremity of an island. That island¹ is situated some miles below the Bocca Tigris, or mouth of the river of Canton, and it is the place to which the Chinese direct that foreigners should proceed when the trade does not require their attendance at Canton. The Chinese have, however, completely separated the small district of Macao from the other parts of the island by a wall, with gates, extending quite across the neck of land on which Macao is situated.

“It is generally believed that Macao was ceded to the Portuguese towards the close of the sixteenth century. About that time the pirates in the China seas had made themselves masters of Macao, and after that blocked up the Canton river and besieged the city of Canton. The mandarins, in this extremity, sought help from the Portuguese. The latter readily engaged on the part of the Chinese, and having attacked the pirates, completely defeated them, and afterwards took Macao from them. In consequence of this successful result the Emperor of China issued an edict in which it is said he gave Macao to the Portuguese, with the power of forming a settlement thereon.

“The supracargoes, in detailing to the Court of Directors a few years ago a difference which had occurred between them and the Portuguese authorities of Macao, observed that the original document granting Macao to the Portuguese was supposed to be lost. The supracargoes, however, according to my remembrance of the circumstances, expressed their conviction that the cession from the Chinese was full and complete. At times, it is said, the Portuguese acted as though they considered themselves possessed of full sovereignty at Macao ; and on other occasions, particularly when the English sought

¹ See Milburn's *Oriental Commerce*, ii. p. 463.

permission to trade there, they pretended they held the place so entirely under the Chinese that they could not grant any such request. But the fact undoubtedly is that landed and other property at Macao is bought, sold, and possessed by virtue of, and according to, the laws of Portugal. Civil, ecclesiastical, and criminal proceedings are also carried on according to Portuguese jurisprudence ; and a case occurred only a few years ago, in which a foreigner was tried, condemned, and executed at Macao under the sanction of, and in obedience to, those laws, the Chinese neither complaining nor interfering on the occasion. Hence whatever may be supposed respecting the real terms in which the original grant of Macao was couched, it may be presumed that as in fact the Portuguese authorities do at the present time exercise many of the prerogatives of sovereignty in that district, it may be safely inferred that the Portuguese Government in Europe may, if they should deem such a measure advisable, transfer Macao to the English, on the same conditions as they appear to have formerly received it from the Chinese, and thereby give the same authority to the English to exercise the same prerogatives as the Portuguese now undoubtedly possess and exercise, under the sanction of the crown of Portugal.”¹

The foregoing observations furnish the historian with a good illustration of the necessity of the caution that contemporary sources should not be accepted blindly, but must be critically examined. Evidence has already been set forth to prove that the Portuguese did not by any means possess full civil and criminal jurisdiction at Macao in 1834. The question of fiscal jurisdiction—which was admittedly Chinese at this period—is not considered, whilst the date of the East India Company’s opinion on the status of Macao is not given. Dr. Morse, in his “Chronicles of the East India Company,” has, on the other hand, shown that the Company were apprehensive concerning the proposed British occupation of Macao in 1802, and again in 1808, since they knew the Chinese would protest. Mr. Thompson, however, took the view that the British Government might wish to acquire Macao from the Portuguese (the necessity for a British commercial base in South China was already recognised), and he was attempting to prove that, if the transfer were arranged, Great Britain would obtain a full and complete title. After 1842, however, the British Government recognised the Chinese rights in Macao (even though these were becoming somewhat indefinite through desuetude), but was not prepared to persist in this policy at the cost of offending Portugal (*e.g.* in 1849). The Hong Kong courts,

¹ J. Thompson, *Considerations respecting the Trade with China*, pp. 114–117.

on their side, wisely avoided the issue by ruling that Macao was not within their jurisdiction—leaving its precise status indefinite.

APPENDIX XXV

THE LAW APPLICABLE TO REAL PROPERTY IN BRITISH COURTS IN CHINA

In the course of his decision in *Macdonald v. Anderson*, Bourne, J., observed :

“ To apply the law of English realty to land under the sovereignty of China is to disregard the distinction between the real and personal statutes—a fundamental principle of Private International Law which can be traced back through the legal history of the Western world to the time of the Roman Republic, and which is as necessary to-day as ever. It is true that our extraterritorial rights in China are not rooted in the history of Western law, as are those in the Levant, for they are the creatures of the Treaties with China, the earliest of which was ratified in 1842 ; but I think there is no doubt that the Orders-in-Council, from which this Court derives its jurisdiction, were framed on the long-established lines of an extra-territorial personal law. When article 5 of the Order-in-Council of 1865 provides that His Majesty’s jurisdiction shall, as far as circumstances admit, be exercised upon the principles and in conformity with the common Law, the Rules of Equity, the Statute Law and other law for the time being in force in and for England, it could not have been intended that the Court was to apply to land in China the English law in regard to land in England (*cf.* Westlake, 3rd edition, p. 226). A well-known rule of construction requires that such an intention being to change the Common Law, should be explicitly stated (*cf.* Story, s. 463) : ‘ It is in the last degree improbable that the Legislature would overthrow fundamental principles . . . without expressing its intention with irresistible clearness.’ (Maxwell’s ‘ Interpretation of Statutes,’ 3rd edition, p. 113.) The principle that land and its incidents are subject to the *lex situs* is not arbitrary, but founded upon cogent considerations of justice and convenience—one of the most obvious of which is that contiguous plots of land should be subject to the same law in regard to such incidents as prescription and servitudes.

“ The land of British subjects at Tientsin is often conterminous with that owned by Frenchmen, Germans and subjects of other Treaty Powers. If the home land law of each proprietor is to apply to his land at Tientsin, there will be different periods of limitation, prescription for servitudes, etc., according to the nationality of the owner for the time being. For example, the German period of limitation is 30 years with conditions (German Civil Code, s. 927) and the French

also 30 years (Code Napoleon Civil, s. 2262), while the English is 12 years ; that is, a British subject could acquire a title to a part of his German neighbour's land by 12 years' possession, while the German could only get the same right by 30 years' possession of the British subject's land, or the German might reduce the necessary period from 30 to 12 years by transferring the legal estate to a British subject. Such injustice and confusion must in any case throw doubt on a construction involving them ; but I can find no colour for such a construction either in the Foreign Jurisdiction Act or in the China Orders-in-Council. The same reasoning excludes the law of the owner's domicile ; and *cf.* *Doe dem. Birtwhistle v. Vardell*, 5 B. and C., p. 451, per Abbott, C.J. Moreover, supposing that we were in a *circulus inextricabilis*, and that while English law applies the *lex situs*, the *lex situs* applies English law, that law cannot be the law of realty, and must, therefore, English law being *ex hypothesi* to be applied, be the law of personalty. For the distinction in English law between realty and personalty is not founded on principle, but it is historically derived from the old forms of actions (*cf.* Goodeve's 'Real Property,' 3rd edition, p. 6). Realty included only interests in land for the enforcement of which a real action was available. But a real action in England was not open to a Plaintiff in regard to any interest in land but freehold, certainly not in regard to land under sovereignty of a Foreign Prince, a result utterly repugnant to feudal Theory (Digby's 'Law of Real Property,' p. 69). Therefore, foreign land cannot be realty in English law, unless explicitly made so by legislation. Supposing then English law has to be applied, land in China would fall under the same law as English chattels real, and for the same reason—that there would have been no real action open to the Plaintiff (*cf.* Williams' 'Real Property,' 16th edition, p. 2). When foreign lands—even foreign possessions of the Crown—were intended to be held under an English feudal tenure, this was explicitly stated, *e.g.* when in 1669 Charles II granted Bombay to the East India Company it was 'to be held of the King in common socage as of the Manor of East Greenwich.' Stress was laid at the Bar and in the judgment in *Hanson v. Watson* on the fact that the tenure of the Chinese land in question corresponded with some particular English tenure of land. But this would seem to be immaterial. Will the Courts in England apply the English law of realty to possession or ownership of land in the United States because the conditions of the tenure chance to agree with some English mode of holding land ? The question is precluded by the fact that the land is foreign. But I should have been bound by the decision in *Hanson v. Watson* if that case had not been virtually overruled, as it seems to me, by a subsequent case in the Privy Council, *Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co.*, [1901] A.C., p. 373. Their Lordships say at p. 384 : 'It is going a long way beyond the immunities accorded to British subjects in Zanzibar, and beyond the reason of these immunities, to say that the moment a plot of land is purchased by an Englishman it is stamped with the same

character and is attended by the same incidents that would belong to it if it were actually transferred to England and surrounded by other English land ; and to say that his neighbours, who may not be British subjects, must have their rights and liabilities governed by its fictitious and not by its actual situation. Their Lordships hold that the grant of extraterritoriality does not involve any such conclusion, and that the Vice-Consul is right in holding that in this case the local law applies. It is true that the court in Zanzibar had as its local law the Mohammedan Code, a certain written law, while we in China are thrown back on a very few written rules—the Penal Code—the greater part of which cannot be applied to a Christian community—upon local customs and upon the Judge's conscience. But that is not a legal reason for applying English feudal tenures to land in China, although it may be a moral one for legislation. I am clear that I ought to apply Chinese law to the facts of the case. . . .

“The Law applicable to land in China owned by His Majesty's subjects has been so long a moot point and the interests involved are so large that I think I ought, now that the question has been raised by this suit, to state my opinion of the effect of the Judgement of the Privy Council in the above case—*Secretary of State v. Charlesworth, Pilling & Co.*, [1901] A.C., p. 373. That case seems by analogy to establish two propositions, that Chinese law ought to be applied by His Majesty's Courts in China to the incidents of land in China, and that His Majesty's judges in China ought to take judicial notice of Chinese law. In regard to the first, the greater part of Chinese written law would be void and inoperative in an English court as inconsistent with the policy of English law—Dicey, pp. 29 and 32 : *Fitzgerald, in re*, [1903] 1 Ch. 941. Further Chinese land law consists almost entirely of local custom : a great deal of English law has been uniformly followed for half a century by His Majesty's subjects in China, and has thus acquired the force of Chinese law—*e.g.* testamentary disposition of land in China according to the English form, and English forms of conveyancing. Where there is no custom, the duty of the Chinese judge is to decide according to good conscience. The British Court would, I conceive, in such cases draw on the civil law as developed by modern continental codes and text-writers, including our own law of personal property which comes in some respects from the same source, *cf.* Maine's 'Ancient Law,' p. 283. If a land law so derived is thought too uncertain to support the large foreign commercial interests now centred in Shanghai and Tientsin, legislation alone can supply the remedy. Rights of limitation and servitude might be governed by Land Regulation approved by the Treaty Powers, and succession *ab intestato* by Order-in-Council. In regard to judicial notice, there is in fact no Chinese written civil law. Judicial notice might be taken of the Penal Code of the present dynasty, translated by Staunton, London, 1810, but custom would have to be proved by evidence.”

APPENDIX XXVI

THE STATUS OF BRITISH SUBJECTS IN THE SERVICE OF THE CHINESE
GOVERNMENT

IN THE SUPREME COURT OF HONG KONG

CROWN SIDE, JULY 28, 1862.

Johnson & Co. v. W. H. Medhurst.

Upon reading the affidavit of Francis Bulkely Johnson, it is ordered that the said Walter Henry Medhurst do, upon the expiration of one month from the date of the service of this rule upon him, show cause before the Supreme Court of Hong Kong, at the Court House, Queen's Road, Victoria, why a writ of mandamus should not issue out of the proper office of the said Supreme Court of Hong Kong, directed to the said Walter H. Medhurst, ordering him to proceed to hear and determine, as Her Britannic Majesty's Consul at Shanghai, a certain charge against the applicants of infringement of the provisions of the Treaty between Her Britannic Majesty and the Emperor of China, in respect of eighty bales of shirtings imported by them in a certain vessel called the *Capriolane* to Shanghai aforesaid, in accordance with the application of the said applicants to the said Walter H. Medhurst, and why the said Supreme Court of Hong Kong should not make such further or other rule or order herein as may be necessary or expedient.

Upon the motion of Mr. EDWARD H. POLLARD

By the Court,

(Signed) T. S. HUFFUM,

Served on me, August 7, 1862.

Acting Deputy Registrar.

(Signed) W. H. MEDHURST.

The Prince of Kung to Mr. Bruce

[Translation.]

Peking, October 24, 1862.

The Prince of Kung makes a communication. The Prince has been informed that the British firm of Bowman & Co., of Shanghai, who, in describing certain goods landed by them, returned to the Customs the number of pieces as much less than was found to be the case; in consequence, Superintendent of Customs has petitioned the Law Court of Hong Kong to call before it Mr. Fitzroy, the (Foreign) Commissioner of Customs for Shanghai, alleging that the above penalty was wrongly inflicted.

The Prince is not versed in British Law, but (it appears to his Highness) that such a proceeding is as inconsistent with the Treaty as it is at variance with justice (or reason).

It is laid down in the Treaty, Article XLVI, that the Chinese

Customs shall adopt whatever measures seem best fitted to secure the protection of the revenue ; and in Tariff Rule 10, that the high officer charged with the superintendence of foreign trade is at liberty to engage British subjects to aid in the prevention of smuggling.

Accordingly in the 12th moon of the 10th year of Hien-Yung (January 1861) the Prince addressed a despatch to Li Tai-Kwo (Mr. Horatio Lay) expressly appointing him Inspector-General of Customs, and directing him to engage a number of Englishmen of good character to assist in various subordinate offices (in the protection of the revenue) at the different ports.

In the spring of the 11th year (1861) Mr. Lay applied for leave to return to England for the benefit of his health, and the Prince in a second despatch instructed Mr. Fitzroy and Mr. Hart to administer the functions of Inspector-General together jointly, Mr. Fitzroy continuing to discharge the duties of Commissioner at Shanghai, his proper station.

In the 7th moon of this year (August 1862) the firm of Bowman & Co., of Shanghai, applied to the Customs for a permit to land 80 bales of 25 pieces each of long cloths, making 2000 pieces in all. Thirty bales had been landed and stored in the godowns of the firm, when a lot of twenty-two bales was stopped by the tide-waiter, on account of their bulk, and, on his report, the Superintendent sent a watcher to weigh them. In the meantime, however, the firm, without waiting to have the goods inspected, had lodged eight bales in their godowns, so that but fourteen were left in the vessel. These, on examination, were found to contain fifty pieces each, and the Superintendent, on the ground that fewer pieces than the correct number had been returned, detained the fourteen bales, and wrote to the Consul to request that he would send a constable to the premises of Bowman & Co. to take possession of the eight bales lodged in their godown.

The following day the representative of the firm went to the Customs house and protested that the entry of 2000 bales was a clerical error, and that there had been no intention whatever to evade the duty.

As this statement was not made until after the error was detected, it is plain that the erroneous entry was made for the purpose of evading the duty, and the confiscation of the goods for example's sake was consequently unavoidable.

The Consul, however, begged so hard for a lenient construction of the case that it was agreed that the whole should not be confiscated, but only the twenty-two bales of which cognisance had been taken on the day of seizure.

The Prince has reviewed the case as reported to him by the Taoutae of Shanghai (the Superintendent of Customs), and he cannot find any fault with the course pursued by that officer. But, supposing his decision incorrect, why did not the merchant aggrieved apply to the Consul to move the British Minister to look into the matter as the

Treaty requires ? It is evident that the merchant regards Inspector-General Fitzroy as acting on his own responsibility. He is aware that the Tariff Rule 10 expressly states that British subjects will be engaged merely to assist in the administration of the Customs ; that they have no independent authority ; that it is the Superintendent of Customs who possesses the independent authority. If the Superintendent of Customs committed himself, on the representation of the British Minister to that effect, it would be, of course, competent for the Prince to investigate his conduct ; and if he were found to have done wrong, the sufferer by his wrong would, of course, have to be indemnified.

If the foreigners engaged were to act in defiance of the Superintendent's instructions, the Superintendent would either displace the offender himself, or would move His Highness to dismiss him. The foreigner exercises no irresponsible authority. But the object of engaging foreigners to assist in the Customs was the prevention of smuggling ; and of what use will they be if, at the moment they are seizing contraband goods, their action is to be stopped by the interference of foreign officials ? The Commissioners of Customs being foreigners, it has become necessary to engage foreigners as tide-waiters also ; and this being so, why should the merchant pretend that it is the Commissioner (only) that he wants to have summoned ? If any trick to which the merchant chooses to resort is to be the rule, will he not in time come to be summoning the Superintendent himself ? But surely, by parity of reasoning, if a Consul commits an error it will be competent for an Intendant or Prefect to subject him to judicial inquiry, will it not ? In a word, if an English merchant be dissatisfied with the acts of the Customs at any port, the proper course is a reference of the question by the Chinese and British authorities respectively to the Prince and the British Minister, who will then be enabled, after due consideration of the question together, to arrive at a satisfactory conclusion. The business of the Chinese Customs cannot be treated as matter of litigation. It would not be right to summon even their tide-waiters at random (or wantonly) ; *a fortiori* it is wrong to arrogate the power of summoning their Inspectors, who discharge (a higher order of) official duties. Still less can there be any difficulty about the course to be pursued where duties are evaded by merchants ; they must be dealt with according to the Treaty, the circumstances must be considered as justice requires, the case reasoned upon consistently with the facts, and this is all that is required to close the question ; there is no occasion for judicial proceedings.

These are the Prince's opinions, and he doubts not that they are shared by His Excellency the British Minister.

A necessary communication addressed to the Honourable Mr. Bruce, etc. etc.

Tung-Chih, 1st Year, 9th Moon, 2nd Day
(October 24, 1862).

Mr. Bruce to Earl Russell (Received April 17, 1863)

[*Extract.*]

Peking, *December 23, 1862.*

I have the honour to enclose copy of a despatch from the Prince of Kung, protesting against the attempt to sue before British Tribunals British subjects in the service of China for acts done by them in the exercise of the authority confided to him. Also copy of a Mandamus issued by the Supreme Court of Hong Kong to Mr. Consul Medhurst, directing him to try the case of *Bowman v. Fitzroy*, for seizure of goods, as a Customs officer, to which case the Prince alludes.

From a careful perusal of sections 4 *et seq.* of Her Majesty's Order in Council of June 13, 1853, it appears to me that both the wording and the intention confine all proceedings in cases of breach of rules and regulations for the enforcement of Treaties to the Consul and to the Chief Superintendent of Trade. In case a British subject is dissatisfied with the decision of the Consul, the remedy lies in an appeal against his decision to the Chief Superintendent of Trade, and if the Chief Superintendent of Trade fails in his duty, the authority to which he is responsible is that of the Chief Secretary of State for Foreign Affairs. The Chief Superintendent in cases arising under this section is the Supreme Court in China; it is for him to prescribe to the Consul the course he is to pursue, and the Supreme Court of Hong Kong cannot interfere in such matters without producing confusion.

Your Lordship will understand the importance I attach to a strict adherence to this division of authority, as I am aware that if Her Majesty's Government decide that a suit against the Chinese Government can be brought before a British Tribunal under cover of an action against a British subject in Chinese employ for an act performed by him in execution of his duty, the Chinese Government will cease to employ British subjects in its Custom-house, and will substitute for them foreigners of other nations, whose Governments do not hold them personally responsible in such matters. In that case I should be deprived of the influence which, as British Minister, I ought to exercise, considering the stake we have in China, or I should be obliged to oppose the introduction of foreigners into the Chinese service. Either alternative would prove fatal, in my opinion, to the success of the policy I have endeavoured to inaugurate at Peking, namely that of strengthening the Chinese Executive, while introducing ideas of administration favourable to the gradual and pacific development of trade.

In my despatch of December 2, I referred to a joint opinion given by Sir W. Atherton and other able Counsel to the effect that the Chinese Custom-house is by Treaty entitled to confiscate goods in certain cases, and that, if it exercises this power unjustly, redress must be sought against the Government by diplomatic proceedings. Also, that for acts done by a British subject in its employ, the Chinese

Government is responsible, and that were an action to be brought against him before a British Tribunal for any act done in the exercise of the authority conferred on him by the Chinese, it is a sufficient defence to plead the authority under which he acted.

In this case, had Messrs. Bowman & Co. in the first instance brought action against Mr. Fitzroy for having seized their goods, it would, technically speaking, have been advisable to allow the plaint to have been entered, and Mr. Fitzroy to have set forth his defence on record. The action would then have come to an end. But a long correspondence and several interviews took place with the Chinese Superintendent of Customs on this case, in which that officer, very properly, treated the act as done by his authority, and accepted the whole responsibility for it.

When the case was referred to me, no sufficient ground existed, in my opinion, for demanding compensation ; and it did not appear to me advisable to direct the Consul to go through the farce of summoning Mr. Fitzroy, after the complainant had recognised the act as done under the authority of the Chinese Government.

If any further argument were required to show that the Order in Council does not contemplate cases against the Chinese Custom-house, it is to be found in the fact that the only penalty which can be imposed under it is a fine of 500 dollars, or imprisonment for three months.

It would be a very advantageous operation for the Chinese Government to be able to confiscate a cargo through its foreign employee, and to escape further liability on payment of a fine of 500 dollars, or by the imprisonment of its foreign employee.

However, the point at issue between me and the Supreme Court is one of jurisdiction. I deny that, in cases under the 4th section of the Order in Council, the Supreme Court can dictate to the Consul what he is to do. These cases are exclusively within my province, subject to the instructions I may receive from the Secretary of State for Foreign Affairs. Whether I ought to have ordered a trial *pro forma* under the circumstances of this particular case, it remains for your Lordship to decide, but I know that the Chinese Government would have denied the competency of the Court to enter into the merits of the case, and that we should not have further advanced, in obtaining compensation, had the Consular Court entered judgment against the defendant.

I may mention that an analogous case happened while I was in Egypt. The director of transit was an Englishman, and some goods having been destroyed on the railway owing, it was alleged, to a want of proper precaution, a suit was begun for damages in the Consular Court against him. The defendant demurred to the competency of the Court, on the ground that the railway belonged to the Egyptian Government, and that the claim ought to have been presented against the Government. The defence was held good, and the plaint was dismissed. The propriety of the decision was not called in question. The principle is the same as that which directs that when damages

are sought for an injury inflicted by a carriage, the action lies, not against the driver, but against the owner of the carriage.

I enclose copies of documents connected with Messrs. Bowman's claim, which will show that, so far from their having been treated with harshness, they were dealt with leniently by the Chinese authorities. The excuse of unintentional error is not made out, for the size of the bales in itself was sufficient to show that the quantities were mis-stated, and should have led to a voluntary offer, before seizure, to amend the description, while the forcible carrying off the bales, in spite of the tide-waiter's remonstrances, was an offence which exposed the agent of Messrs. Bowman to serious punishment had it been brought forward against him. If the Chinese Custom-house is to be efficient, it must apply penalties rigorously and without exceptions; for if a merchant of one nation is let off, the merchants of other nations claim the same indulgence, national jealousies are called into play, and efficient Customs administration becomes impossible.

Earl Russell to Sir F. Bruce

Foreign Office, *August 14, 1863.*

SIR,—Her Majesty's Government have had under their consideration, and they have consulted the Law Officers of the Crown upon your despatch of December 23 last, and its enclosures, respecting the protest of Prince Kung against the attempt made to sue, before British tribunals, British subjects in the Service of China for acts done by them in the exercise of the authority confided to them.

I have now to state to you that it appears to Her Majesty's Government that you have fallen into an error by confounding two distinct questions, viz., a question relating to the infringement of rules made under the Order in Council of June 13, 1853, and a question as to alleged civil liability as between British subjects in the Consular Courts in China.

It appears to Her Majesty's Government that you are mistaken in treating the question which you have referred to them for decision as depending upon the 4th and following Articles of the Order in Council. Those Articles relate to the infringement of the Treaty and other Regulations, and to the punishment of such infringements by penalties, and not in any way to civil suits.

But in the present case a difference has arisen between "British subjects," that is, the complainant and the person complained of are both British subjects. To such a case the 12th Article of the Order in Council applies, and the Consul of the district is competent to hear and determine the matter. His decision is subject to an appeal to the Chief Superintendent if the sum in dispute does not exceed 1000 dollars, but if it exceed that sum, then to the Supreme Court of Hong Kong, and not to the Chief Superintendent. This proceeding before the Consul will be "a suit of a civil nature," and Her Majesty's Government are of opinion that the suit ought to be

entertained under Article 12 of the Order in Council. But Her Majesty's Government also think that the Court which should entertain it would be bound to give judgment for the defendant, upon the fact of his employment as a Chinese functionary in the Chinese Customs being either admitted or proved, for Her Majesty's Government conceive that a British subject so employed is not civilly answerable in the British Consular Courts for acts done by him in his official capacity.

There remains the question as to the power of the Supreme Court at Hong Kong to issue a mandamus to the Consular Court, and, so far as Her Majesty's Government are aware, such a power cannot be assumed by the Court at Hong Kong, which is, without such authority, merely a Court of Appellate, and in some cases of concurrent jurisdiction.

I shall only further observe that these difficulties have arisen from an event not expressly contemplated in the year 1853, viz., the employment of British subjects in the service of the Emperor of China. Her Majesty's Government consider that such persons do not, by virtue of that service, cease to be "British subjects" under the terms of the Order in Council; although, in respect of acts done by them officially in the service of the Chinese Government, when such justification is pleaded and proved, they ought not to be holden civilly liable in the Consular Courts.

I am, etc.,

(Signed) RUSSELL.¹

APPENDIX XXVII

PROPOSALS FOR A COURT OF APPEAL

Hongkong, *August 27, 1898.*

SIR,—I beg to acknowledge the receipt of your letter dated July 27th, inviting me, on behalf of His Excellency the Governor, to express my opinion respecting a project under the consideration of Government for the establishment of an intermediate Appeal Court from the Supreme Court of Hongkong, China, and Japan.

The subject is one to which I have given from time to time some share of attention, and I have had opportunities of discussing the establishment of such a Court with a gentleman belonging to mercantile firms in Hongkong, Japan, and Shanghai, to the Chief Judge of which place I mentioned my views when he passed through in the spring of this year.

I have carefully considered the proposed scheme as detailed in your letter No. 576, and, as I am asked to do so, I have much pleasure in stating the opinion I have formed, and also in submitting some suggestions on points where I think the scheme could be amended.

The proposal, as I understand it, is first to create a Court of Appeal

¹ *Papers relating to the Affairs of China*, 1864, pp. 31-34, 94.

intermediate between the Supreme Courts of Hongkong, Shanghai, and Japan, and the Judicial Committee of the Privy Council. That this Court of Appeal is to be composed of the Chief Justice of Hongkong and the Chief Judges of the Supreme Courts of China and Japan.

Secondly,—That this Court is to sit at a place where the appeal arose, unless otherwise ordered.

It will be convenient to consider this part of the proposed scheme first of all.

I fear that the great expense would form an insuperable objection.

Suppose, for example, the Court of Appeal were fixed to meet at Shanghai, which is about equi-distant between Hongkong and Yokohama, to hear some appeals. After allowing for the time which would be occupied in actual travelling from Shanghai, delays incidental to sea-voyages, etc., hearing the arguments in a few, say, four appeals, it would not be safe to calculate that a shorter period than a month would be consumed.

The expenses for the two judges and their clerks whose attendance would be necessary at a moderate estimate amount to £200.

Unless the fees of the Court are fixed on a very high scale, they would not go far in defraying these expenses ; a large proportion of which, however, would fall on the Imperial and Colonial (Hongkong) Exchequer.

But this would form a very small part of the expense. Although at Hongkong, Shanghai, and Yokohama, perfectly competent counsel could be engaged to argue a case before the Court of Appeal, it would probably be thought necessary by the parties to employ the counsel who had had the management of the suit in the Court below.

In many cases this would be considered necessary, in the majority of cases most desirable. And the counsel would be accompanied by the solicitor (from Hongkong) who had instructed him from the commencement of the proceedings.

Any one acquainted with the fees charged for legal services in China and Japan will at once see that the expense would be very heavy. The fees of counsel and the fees of solicitors are exorbitantly high as compared with the fees paid to counsel and solicitors in England of the highest position.

Nor are legal expenses more moderate at places where the professions are united as at Shanghai and Yokohama instead of being distinct as at Hongkong ; on the contrary, I believe that the luxury of going to law is more costly.

For these reasons it appears to me that an ambulatory Court of Appeal would be practically of little use ; parties would rarely resort to it, especially as it is proposed to give them their option of carrying their appeal, in the first instance, to the Judicial Committee of the Privy Council.

No one would, I think, resort willingly to the Intermediate Court at the risk of incurring heavy costs, when even if he succeed he is liable to be dragged from thence to the Privy Council.

It would therefore I think be advisable, if it is resolved to establish the moveable Court of Appeal, to make its decisions final. There would be a greater inclination to have recourse to it from the diminished risk of heavy expenses, I am inclined to believe.

But, in fact, the inducement to take a case at once before the Judicial Committee of the Privy Council would, as it seems to me, be even then too great.

The ease and simplicity with which cases are now brought before a Court composed of judges of great eminence and the celerity with which they are disposed of at a moderate cost leaves little to be desired.

An Appeal can be sent to England and a decision obtained, generally speaking, in about five or six months from any part of China and Japan. The proposed Court of Appeal could not, without great inconvenience and interference with the regular local work of the Supreme Courts, meet oftener than twice a year.

This brings me to the consideration of the alternative proposal contained in para. 4 of your letter, viz., that the opinions of the judges of the Court of Appeal might be obtained by means of a special case accompanied by written or printed arguments and documents annexed.

This I am convinced, although imperfect, is the only practicable scheme, and I do not see why in this Colony with some modifications a really useful Court of Appeal should not be established.

An Appeal would lie from the judgment of a Chief Judge of one of the Supreme Courts either of an original suit, or on an appeal from one of the Provincial Courts.

In appeals against judgments on a question of law, copies of a special case to be settled by the Judge of the Court where the appeal arose with copies of the judgment and references to the decided cases and authorities bearing on the subject would almost be all the documents requisite.

It might be considered advisable to annex the printed or written arguments of counsel for the parties, or power might be given to each party to employ one counsel to argue the case before the judges at each place.

Or, parties might send down the counsel originally employed at their own cost.

An obvious objection to the employment of different counsel to argue before the two Judges, that different arguments might be employed and decisions might proceed on different and perhaps inconsistent grounds need not, I think, have much weight.

On an appeal from the decision of one of the Chief Judges on a judgment brought up from a Provincial Court, it would be necessary to remit copies of all the evidence taken before the Provincial Court.

Judicial officers at the Treaty Ports should be instructed to take very full notes of evidence and of the proceedings before them, and as counsel are not very frequently employed they should always be ready to assist parties and promote the appeal in every way possible.

When an appeal is from one of the Supreme Courts in the first instance on the ground that a verdict of a jury or a decision of a Chief Judge is against the weight of evidence, it would probably be necessary to have the printed or written arguments of the counsel or parties on a motion for a re-hearing or a new trial as well as copies of the evidence and of the petition and answer furnished to the Court of Appeal.

The written judgments of the two other judges could, when prepared, be remitted to the Supreme Court whence the appeal came.

Appeals would be distributed in the following way. In Japan from the Provincial Courts to the Supreme Courts located at Yokohama or elsewhere and the papers on appeal distributed from thence to Shanghai and Hongkong.

In China I would suggest that the Provincial Courts should be divided into two jurisdictions, between Hongkong and Shanghai.

The treaty ports are twenty-one, inclusive of Shanghai, ten being of the first class having resident consuls. It would be easy to divide them so as best to suit public convenience.

Without going further into details ; I think that in some such way as this a fairly useful Court of Appeal might be established.

But the plan might be amended very much to the advantage of the public by giving the power to appeal direct from the Provincial Courts to the Court of Appeal, omitting the intermediate appeal to the Supreme Court of the district, which would be of little value, and the inclination or rather duty cast on a Court of Appeal to support the judgment of one of its members unless clearly wrong would be avoided. The three Judges would come fresh to the consideration of the subject of the appeal.

If this course were to be adopted I would suggest that the Court of Appeal should be constituted as follows :

From the Provincial Courts within the district of the Supreme Court of Japan, appeals should be to a Court composed of the Chief Justice of Hongkong and the Chief Judge of Shanghai and the Chief Judge for Japan. Within the districts of Shanghai and Hongkong, the Chief Justice of Hongkong and the Puisne Judge of the Supreme Court of Hongkong.

There would be these advantages in making the Puisne Judge of Hongkong one of the Court of Appeal for the two Chinese districts.

1st. A great saving of time and money as communication is frequent and cheap between the ports.

2nd. That two of the Judges being resident in Hongkong would be able to confer together whilst coming to a decision. The great help of personal communication at such a time needs no remark.

3rd. It may be presumed that the greater familiarity Judges resident in Shanghai and Hongkong might be supposed to have with Chinese customs and manners would enable them to deal with such cases with greater ease than the Judge resident in Japan.

Appeals might, I think, in this way be received from the Provincial

Courts and decided within the periods of one month or six weeks easily.

Thus a very great want in the judicial system for China and Japan would be supplied and a defect remedied.

The judgment of the Court of Appeal so constituted should be final, unless special leave be given to appeal to Her Majesty-in-Council.

I have etc.,

(Signed) F. SNOWDEN,

Acting Chief Justice.

The Hon. The Colonial Secretary.¹

APPENDIX XXVIII

EXTRATERRITORIAL PROVISIONS OF THE TREATY OF CANTON, CONCLUDED BY SWEDEN AND NORWAY WITH CHINA, MARCH 20, 1847

Article XVI.—The Chinese Government will not hold itself responsible for any debts which may happen to be due from subjects of China to subjects of Sweden and Norway, or for frauds committed by them ; but Swedes and Norwegians may seek redress in law ; and on suitable representation being made to the Chinese local authorities through the Consul, they will cause due examination in the premises, and take all proper steps to compel satisfaction.

But in case the debtor be dead, or without property, or have absconded, the creditor cannot be indemnified according to the old system of the co-hong so called ; and if subjects of His Majesty the King of Sweden and Norway be indebted to subjects of China, the latter may seek redress in the same way through the Consul, but without any responsibility for the debt on the part of Sweden and Norway.

Article XVII.—Subjects of His Majesty the King of Sweden and Norway residing or sojourning at any of the ports shall enjoy all proper accommodation in obtaining houses and places of business, and also hospitals, churches and cemeteries. The local authorities of the two Governments shall select in concert the sites for the foregoing objects, having due regard to the feelings of the people in the location thereof ; and the parties interested will fix the rent by mutual agreement, the proprietors on the one hand not demanding any exorbitant price, nor the merchants on the other unreasonably insisting on particular spots, but each conducting with justice and moderation ; and any desecration of said cemeteries by subjects of China shall be severely punished according to law. . . .

¹ *The History of the Laws and Courts of Hong Kong*, ii. pp. 280–283. By James William Norton-Kyshe of Lincoln's Inn, Barrister at Law, Registrar of the Supreme Court of Hong Kong.

Article XIX.—All subjects of His Majesty the King of Sweden and Norway in China peaceably attending to their affairs, being placed on a common footing of amity and goodwill with subjects of China, shall receive and enjoy, for themselves and everything appertaining to them, the special protection of the local authorities of Government, who shall defend them from all insult or injury of any sort on the part of the Chinese. If their dwellings or property be threatened or attacked by mobs, incendiaries, or other violent or lawless persons, the local officers, on requisition of the Consul, will immediately despatch a military force to disperse the rioters, and will apprehend the guilty individuals, and punish them with the utmost rigour of the law.

Article XXI. Subjects of China who may be guilty of any criminal act towards Swedish or Norwegian subjects shall be arrested and punished by the Chinese authorities according to the laws of China, and subjects of Sweden and Norway who may commit any crime in China shall be subject to be tried and punished only by the Consul or other public functionary of Sweden or Norway thereto authorised according to the laws of his country ; and in order to the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides.

Article XXV.—All questions in regard to rights, whether of property or person, arising between subjects of His Majesty the King of Sweden and Norway in China shall be subject to the jurisdiction and regulated by the authorities of their own Government ; and all controversies occurring in China between subjects of Sweden and Norway and the subjects of any other Government shall be regulated by the Treaties existing between Sweden and Norway and such Governments respectively, without any interference on the part of China.

Article XXVI.—Swedish and Norwegian merchant vessels lying in the waters of the five ports of China open to foreign commerce will be under the jurisdiction of the officers of their own Government who, with the masters and owners thereof, will manage the same, without control on the part of China. For injuries done to the citizens or to the commerce of Sweden and Norway by any foreign Power, the Chinese Government will not hold itself bound to make reparation. But if Swedish or Norwegian merchant vessels, while within the waters over which the Chinese Government exercises jurisdiction, be plundered by robbers and pirates, then the Chinese local authorities, civil and military, on receiving information thereof, will arrest the said robbers or pirates and punish them according to law, and will cause all the property which can be recovered to be placed in the hands of the nearest Consul or other officer of the United Kingdoms of Sweden and Norway, to be by him restored to the true owner ; but if, by reason of the extent of territory and numerous population of China, it should in any case happen that the robbers cannot be apprehended or the property only in part recovered, then the law will take its course in regard to the local authorities,

but the Chinese Government will not make indemnity for the goods lost.

Article XXVIII.—Subjects of His Majesty the King of Sweden and Norway, their vessels and property, shall not be subject to any embargo, nor shall they be seized or forcibly detained for any pretence of the public service ; but they shall be suffered to prosecute their commerce in quiet, and without molestation or embarrassment.

APPENDIX XXIX

SIR JOHN BOWRING'S ATTITUDE TO THE LORCHA *Arrow*

Sir J. Bowring to the Earl of Clarendon (received June 29)

Hongkong, *May* 8, 1857.

MY LORD,—Though I, perhaps, ought to rest satisfied with the prompt, generous, and unreserved approval with which Her Majesty's Government sanctioned my proceedings as connected with the recent events in Canton, I feel, after reading the debates in Parliament, that I owe to the defence of my own character some observations in reference to the lorcha *Arrow*, and to the extent of protection which, under the flag she bore, she seemed entitled to receive at my hands.

The papers connected with the Ordinance No. 4 of 1855, under which the flag was granted, having been published, I have to add, in explanation, that one of the main objects of that Ordinance was to place under periodical revision the proceedings of vessels enjoying the local privileges conceded under its sanction. It is not necessary I should re-state the grounds which led to the passing an Ordinance which was unanimously adopted by the Legislative Body here, inasmuch as, after deliberate consideration, it was approved by Her Majesty in Council. That Ordinance gave to me prompt means of punishing any irregularity, and the Chinese, who had been made acquainted with its provisions, never objected to any of them, and were bound to treat with becoming regard any vessel which bore *prima facie* evidence of having complied with the conditions on which the license was granted.

When I discovered the fact that the term for which the license was conceded had expired, I wrote to the Consul, for his guidance, that the term of protection had so expired.

But it was not less a question for my consideration whether the fact of the expiry of the license gave to the Chinese jurisdiction, and authorised the violence exercised towards the crew of the *Arrow*.

In my judgment, it did not.

For, first, they were wholly ignorant that the term of the license had expired, and never for a moment put forward that excuse for their proceedings. Had they done so, had they acted as they were bound to act under Treaty obligations, the Consul would, no doubt, have

made a special reference of the point to me, and the Chinese would have had all the advantage of having discovered a flaw in the title of the vessel, and their representations would have met with prompt attention from me.

But, secondly, I had to look at their intentions, as exhibited by their acts. There was no doubt in my mind that it was their distinct purpose to disregard the rights, and trample on the privileges, of a British flag—rights and privileges which I thought it my especial duty to maintain.

Thirdly, the surrender of Chinese subjects, who must undoubtedly have believed they were entitled to the protection of the flag under which they served, to so bloodthirsty a ruler as his Excellency Yeh, whose frightful sacrifices of human life probably exceed in numbers and in cruelty anything in the records of history, would, in my opinion, have been an unpardonable abandonment of unfortunate men.

Fourthly, the case of the *Arrow* was but one of a succession of wrongs of which I had to complain, and for which I could obtain no redress. Yeh has always exhibited a contemptuous disregard not only of my representations, but of those of the Ministers of other Treaty Powers ; and the affair of the lorcha was but an accidental incident in a long history of grievances ; though it undoubtedly brought about the crisis which no man acquainted with Chinese affairs will, I believe, hold was other than inevitable.

Fifthly, the expiry of the license, the failure of the owners to seek its renewal, placed the ship under Colonial jurisdiction, and she became responsible to the Government for the penalties she might have incurred. The Chinese had no title whatever to interfere with her except through the Consulate. Their plea that she was a Chinese, and had never been a British vessel, was altogether without foundation. This was the *locus standi* on which his Excellency Yeh chose to base his argument : this was the question between him and me. I hold that he was altogether wrong, and his wrong warranted my assertion of our rights.

I repeat, then, that whether the *Arrow* was entitled to protection or not, the Chinese had no jurisdiction ; and their proceedings were unwarrantable, and to be resented. The expiry of the license did not make the lorcha a Chinese vessel, and gave the Chinese no right to interfere, except through the Consul. She could only be a foreign vessel in their eyes. The papers, whether in order or not, were deposited at the Consulate, and if they had acted in accordance with the conditions of the Treaty, and had put themselves in communication with the Consul, there would have been no collision. The papers granted were, I contend, of undoubted validity against any but British authority—the authority which alone granted, and which alone was entitled to withdraw, protection.

If, then, the fact of the expiry of the license, of the right of the lorcha to its renewal, did in no respect concern the Chinese, but the British alone, my action was a necessity—at all events as far as placing

the question in the hands of the naval authorities when I could obtain no redress.

The after-proceedings of Sir Michael Seymour need no defence from me.

I have, &c.,
(Signed) JOHN BOWRING.¹

APPENDIX XXX

EXTRATERRITORIAL PROVISIONS OF THE BRITISH TREATY OF TIENTSIN, JUNE 26, 1858

Article IX.—British subjects are hereby authorized to travel for their pleasure or for the purposes of trade, to all parts of the Interior, under Passports, which will be issued by their Consuls and countersigned by their Local Authorities. These Passports, if demanded, must be produced for examination in the localities passed through. If the Passport be not irregular, the Bearer will be allowed to proceed, and no opposition shall be offered to his hiring persons, or hiring vessels for the carriage of Baggage or Merchandise.

If he be without a Passport, or if he commit any offence against the Law, he shall be handed over to the nearest Consul for punishment, but he must not be subjected to any ill-usage in excess of necessary restraint. . . .

The Provisions of this Article do not apply to Crews of Ships, for the due restraint of whom Regulations will be drawn up by the Consul and Local Authorities. . . .

Article XII.—British subjects, whether at the Ports or at other places, desiring to build or open Houses, Warehouses, Churches, Hospitals, or Burial grounds, shall make their agreement for the land or buildings they require, at rates prevailing among the people, equitably and without exaction on either side.

Article XV.—All questions in regard to rights, whether of property or person, arising between British subjects, shall be subject to the jurisdiction of the British authorities.

Article XVI.—Chinese subjects who may be guilty of any criminal act towards British subjects shall be arrested and punished by the Chinese authorities according to the Laws of China.

British subjects who may commit any crime in China shall be tried and punished by the Consul or other Public Functionary authorized thereto according to the Laws of Great Britain.

Justice shall be equitably and impartially administered on both sides.

¹ *Further Papers relating to the Proceedings of Her Majesty's Naval Forces at Canton, 1857, pp. 1-2.*

Article XVII.—A British subject having reason to complain of a Chinese must proceed to the Consulate and state his grievance. The Consul will inquire into the merits of the case, and do his utmost to arrange it amicably. In like manner, if a Chinese have reason to complain of a British subject, the Consul shall no less listen to his complaint, and endeavour to settle it in a friendly manner. If disputes take place of such a nature that the Consul cannot arrange them amicably, then he shall request the assistance of the Chinese authorities, that they may together examine into the merits of the case and decide it equitably.

Article XVIII.—The Chinese authorities shall at all times afford the fullest protection to the persons and property of British subjects whenever these shall have been subjected to insult or violence. In all cases of incendiarism or robbery, the local authorities shall at once take the necessary steps for the recovery of the stolen property, the suppression of disorder and the arrest of the guilty parties, whom they will punish according to law.

Article XIX.—If any British merchant vessel while within Chinese waters be plundered by robbers or pirates, it shall be the duty of the Chinese authorities to use every endeavour to capture and punish the said robbers or pirates, and to recover the stolen property, that it may be handed over to the Consul for restoration to the owner.

Article XX.—If any British vessel be at any time wrecked or stranded on the Coast of China, or be compelled to take refuge in any Port within the dominions of the Emperor of China, the Chinese authorities, on being apprised of the fact, shall immediately adopt measures for its relief and security ; the persons on board shall receive friendly treatment, and shall be furnished, if necessary, with the means of conveyance to the nearest Consular station.

Article XXI.—If criminals, subjects of China, shall take refuge in Hong Kong, or on board the British ships there, they shall upon due requisition by the Chinese authorities be searched for, and on proof of their guilt be delivered up.

In like manner, if Chinese offenders take refuge in the houses or on board the vessels of British subjects at the open Ports, they shall not be harboured or concealed, but shall be delivered up, on due requisition by the Chinese authorities, addressed to the British Consul.

Article XXII.—Should any Chinese subject fail to discharge Debts incurred to a British subject, or should he fraudulently abscond, the Chinese authorities will do their utmost to effect his arrest, and enforce recovery of the Debts. The British authorities will likewise do their utmost to bring to justice any British subject fraudulently absconding, or failing to discharge Debts incurred by him to a Chinese subject.

Article XXIII.—Should natives of China who may repair to Hong Kong to trade incur Debts there, the recovery of such Debts must be arranged for by the English Courts of Justice on the spot ; but should the Chinese Debtor abscond, and be known to have property, real or personal, within the Chinese Territory, it shall be the duty of the

Chinese authorities, on application by, and in concert with the British Consul, to do their utmost to see Justice done between the parties.

Article XLVII.—British merchant vessels are not entitled to resort to other than the Ports of Trade declared open by this Treaty. They are not unlawfully to enter other Ports in China or to carry on clandestine Trade along the coasts thereof. Any vessel violating this provision shall, with her cargo, be subject to confiscation by the Chinese Government.

Article XLVIII.—If any British merchant vessel be concerned in smuggling, the goods, whatever their value or nature, shall be subject to confiscation by the Chinese authorities, and the ship may be prohibited from trading further, and sent away as soon as her accounts shall have been adjusted and paid.

Article XLIX.—All penalties enforced or confiscations made under this Treaty, shall belong and be appropriated to the Public Service of the Government of China.

Article LIII.—In consideration of the injury sustained by Native and Foreign commerce from the prevalence of piracy, in the seas of China, the High Contracting Parties agree to concert measures for its suppression.

APPENDIX XXXI

EXTRATERRITORIAL PROVISIONS OF THE FRENCH TREATY OF TIENTSIN, JUNE 27, 1858

Article VII.—Les Français et leurs familles pourront se transporter, s'établir et se livrer au commerce ou à leur industrie, en toute sécurité et sans entrave d'aucune espèce, dans les ports et villes de l'Empire Chinois situés sur les côtes maritimes et sur les grands fleuves dont l'énumération est contenue dans l'Article précédent.

Ils pourront circuler librement de l'un à l'autre, s'ils sont munis de passeports ; mais il leur est formellement défendu de pratiquer sur la côte des ventes ou des achats clandestins sous peine de confiscation des navires et des marchandises engagées dans ces opérations ; et cette confiscation aura lieu au profit du Gouvernement Chinois, qui devra cependant, avant que la saisie et la confiscation ne soient légalement prononcées, en donner avis au Consul Français du port le plus voisin.

Article X.—Tout Français qui, conformément aux stipulations de l'Article six du présent Traité, arrivera dans l'un des ports ouverts au commerce étranger, pourra, quelle que soit la durée de son séjour, y louer des maisons et des magasins pour déposer ses marchandises, ou bien affermer des terrains et y bâtir lui même des maisons et des magasins. Les Français pourront, de la même manière, établir des églises, des hôpitaux, des hospices, des écoles et des cimetières. Dans ce but, l'autorité locale, après s'être concertée avec le Consul, désignera

les quartiers les plus convenables pour la résidence des Français et les endroits dans lesquels pourront avoir lieu les constructions précitées.

Le prix des loyers et des fermages sera librement débattu entre les parties intéressées, et réglé, autant que faire se pourra, conformément à la moyenne des prix locaux.

Les autorités Chinoises empêcheront leurs nationaux de surfaire ou d'exiger des prix exorbitants, et le Consul veillera, de son côté, à ce que les Français n'usent pas de violence ou de contrainte pour forcer le consentement des propriétaires. Il est bien entendu, d'ailleurs, que le nombre des maisons et l'étendu des terrains à affecter aux Français dans les ports ouverts au commerce étranger ne seront point limités et qu'ils seront déterminés d'après les besoins et les convenances des ayants-droit. Si des Chinois violaient ou détruiraient des églises ou de cimetières Français, les coupables seraient punis suivant toute la rigueur des lois du pays.

Article XXXII.—S'il arrive que des matelots ou autres individus désertent des bâtiments de guerre ou s'évadent des navires de commerce Français, l'autorité Chinoise, sur la réquisition du Consul ou, à son défaut, du capitaine, fera tous ses efforts pour découvrir et restituer sur le champ, entre les mains de l'un ou de l'autre, les susdits déserteurs ou fugitifs.

Pareillement si des Chinois déserteurs ou prévenus de quelque crime vont se réfugier dans des maisons Françaises ou à bord de navires appartenant à des Français, l'autorité locale s'adressera au Consul, qui, sur la preuve de la culpabilité des prévenus, prendra immédiatement les mesures nécessaires pour que leur extradition soit effectuée. De part et d'autre on évitera soigneusement tout recel et toute connivence.

Article XXXIII.—Quand des matelots descendront à terre, ils seront soumis à des règlements de discipline spéciale qui seront arrêtés par le Consul et communiqués à l'autorité locale, de manière à prévenir, autant que possible, toute occasion de querelle entre les marins Français et les gens du pays.

Article XXXIV.—Dans le cas où des navires de commerce Français seraient attaqués ou pillés par des pirates dans des parages dépendants de la Chine, l'autorité civile et militaire du lieu le plus rapproché, dès qu'elle aura connaissance du fait, en poursuivra activement les auteurs et ne négligera rien pour qu'ils soient arrêtés et punis conformément aux lois. Les marchandises enlevées en quelque lieu et dans quelque état qu'elles se trouvent, seront remises entre les mains du Consul, qui se chargera de les restituer aux ayants-droit. Si l'on ne peut s'emparer des coupables ni recouvrer la totalité des objets volés, les fonctionnaires Chinois subiront la peine infligée par la loi en pareille circonstance, mais ils ne sauraient être rendus pécuniairement responsables.

Article XXXV.—Lorsqu'un sujet Français aura quelque motif de plainte ou quelque réclamation à formuler contre un Chinois, il devra d'abord exposer ses griefs au Consul, qui, après avoir examiné l'affaire, s'efforcera de l'arranger à l'amiable. De même, quand un Chinois

aura à se plaindre d'un Français, le Consul écoutera sa réclamation avec intérêt et cherchera à ménager un arrangement à l'amiable. Mais si dans l'un ou l'autre cas la chose était impossible, le Consul requerra l'assistance du fonctionnaire Chinois compétent, et tous deux, après avoir examiné conjointement l'affaire, statueront suivant l'équité.

Article XXXVI.—Si dorénavant des citoyens Français éprouvaient quelque dommage, ou s'ils étaient l'objet de quelque insulte ou vexation de la part de sujets Chinois, ceux-ci seraient poursuivis par l'autorité locale, qui prendra les mesures nécessaires pour la défense et la protection des Français : à bien plus forte raison, si des malfaiteurs ou quelque partie égarée de la population tentaient de piller, de détruire ou d'incendier les maisons, les magasins des Français ou tout autre établissement formé par eux, la même autorité, soit à la réquisition du Consul soit de son propre mouvement, enverrait en toute hâte la force armée pour dissiper l'émeute, s'emparer des coupables et les livrer à toute la sévérité des lois ; le tout sans préjudice des poursuites à exercer par qui de droit pour indemnisation des pertes éprouvées.

Article XXXVII.—Si des Chinois, à l'avenir, deviennent débiteurs de capitaines ou de négociants Français et leur font éprouver des pertes par fraude ou de toute autre manière, ceux-ci n'auront plus à se prévaloir de la solidarité qui résultait de l'ancien état de choses ; ils pourront seulement s'adresser, pour l'entremise de leurs Consuls, à l'autorité locale, qui ne négligera rien, après avoir examiné l'affaire, pour contraindre les prévenus à satisfaire à leurs engagements, suivant la loi du pays. Mais si le débiteur ne peut être retrouvé, s'il est mort ou en faillite et s'il ne reste rien pour payer, les négociants Français ne pourront point appeler l'autorité Chinoise en garantie.

En cas de fraude ou de non-paiement de la part des négociants Français, le Consul prêtera de la même manière assistance aux réclamants, sans que, toutefois, ni lui ni son Gouvernement puissent, en aucune manière, être rendus responsables.

Article XXXVIII.—Si, malheureusement, il s'élevait quelque rixe ou quelque querelle entre des Français et des Chinois, comme aussi dans le cas où durant le cours d'une semblable querelle un ou plusieurs individus seraient tués ou blessés, soit par des coups de feu soit autrement, les Chinois seront arrêtés par l'autorité Chinoise, qui se chargera de les faire examiner et punir, s'il y a lieu, conformément aux lois du pays. Quant au Français, ils seront arrêtés à la diligence du Consul, et celui-ci prendra toutes les mesures nécessaires pour que les prévenus soient livrés à l'action régulière des lois Françaises dans la forme et suivant les dispositions qui seront ultérieurement déterminées par le Gouvernement Français.

Il en sera de même en toute circonstance analogue et non prévue dans la présent Convention, le principe étant que, pour la répression des crimes et délits commis par eux en Chine, les Français seront constamment régis par les lois Françaises.

Article XXXIX.—Les Français en Chine dépendront également pour toutes les difficultés ou les contestations qui pourraient s'élever

entre eux, de la juridiction Française. En cas de différends survenus entre Français et étrangers, il est bien stipulé que l'autorité Chinoise n'aura à s'en mêler en aucune manière. Elle n'aura pareillement à exercer aucune action sur les navires Français. Ceux-ci ne relèveront que de l'autorité Française et du capitaine.

APPENDIX XXXII

EXTRATERRITORIAL PROVISIONS OF THE AMERICAN TREATY OF TIENTSIN, JUNE 18, 1858

Article IX.— . . . And the United States of America agree that in case of the shipwreck of any American vessel and its being pillaged by pirates, or in case any American vessel shall be pillaged or captured by pirates, on the seas adjacent to the coast, without being shipwrecked, the national vessels of the United States shall pursue the said pirates and, if captured, deliver them over for trial and punishment.

Article XI.—All citizens of the United States of America in China peaceably attending to their affairs, being placed on a common footing of amity and goodwill with subjects of China, shall receive and enjoy, for themselves and everything appertaining to them, the protection of the local authorities of Government, who shall defend them from all insult or injury of any sort. If their dwellings or property be threatened or attacked by mobs, incendiaries, or other violent or lawless persons, the local officers, on requisition of the Consul, shall immediately despatch a military force to disperse the rioters, apprehend the guilty individuals, and punish them with the utmost rigour of the law. Subjects of China guilty of any criminal act towards citizens of the United States shall be punished by the Chinese authorities according to the laws of China ; and citizens of the United States, either on shore or in any merchant vessel, who may insult, trouble, or wound the persons or injure the property of Chinese, or commit any other improper act in China, shall be punished only by the Consul or other public functionary thereto authorised, according to the laws of the United States. Arrests in order to trial may be made by either the Chinese or the United States authorities.

Article XII.—Citizens of the United States residing or sojourning at any of the ports open to foreign commerce shall be permitted to rent houses and places of business, or hire sites on which they can themselves build houses or hospitals, churches and cemeteries. The parties interested can fix the rent by mutual and equitable agreement ; the proprietors shall not demand an exorbitant price, nor shall the local authorities interfere, unless there be some objections offered on the part of the inhabitants respecting the place. The legal fees to the officers for applying their seal shall be paid. The citizens of the United States shall not unreasonably insist on particular spots, but each party shall conduct himself with justice and moderation. Any desecration of the

cemeteries by natives of China shall be severely punished according to law. At the places where the ships of the United States anchor or their citizens reside, the merchants, seamen, or others can freely pass and re-pass in the immediate neighbourhood, but in order to the preservation of the public peace, they shall not go into the country to the villages and marts to sell their goods unlawfully in fraud of the revenue.

Article XIII.—If any vessel of the United States be wrecked or stranded on the coast of China, and be subjected to plunder or other damage, the proper officers of Government, on receiving information of the fact, shall immediately adopt measures for its relief and security; the persons on board shall receive friendly treatment and be enabled to repair at once to the nearest port, and shall enjoy all facilities for obtaining supplies of provisions and water. If the merchant vessels of the United States, while within the waters over which the Chinese Government exercises jurisdiction, be plundered by robbers or pirates, then the Chinese local authorities, civil and military, on receiving information thereof, shall arrest the said robbers or pirates and punish them according to law, and shall cause all the property which can be recovered to be restored to the owners or placed in the hands of the Consul. If by reason of the extent of territory and numerous population of China, it shall in any case happen that the robbers cannot be apprehended and the property only in part recovered, the Chinese Government shall not make indemnity for the goods lost. But if it shall be proved that the local authorities have been in collusion with the robbers the same shall be communicated to the superior authorities for memorialising the Throne, and these officers shall be severely punished and their property be confiscated to repay losses.

Article XIV.—(American) vessels shall not carry on a clandestine and fraudulent trade at other ports of China not declared to be legal, or along the coasts thereof. And any vessel under the American flag violating this provision shall, with her cargo, be subject to confiscation to the Chinese Government; and any citizen of the United States who shall trade in any contraband article of merchandise shall be subject to be dealt with by the Chinese Government, without being entitled to any countenance or protection from that of the United States. And the United States will take measures to prevent their flag from being abused by the subjects of other nations as a cover for the violation of the laws of the Empire.

Article XVIII.—. . . The local authorities of the Chinese Government shall cause to be apprehended all mutineers or deserters from on board the vessels of the United States in China, on being informed by the Consul, and will deliver them up to the Consuls or other officers for punishment. And if criminals, subjects of China, take refuge in the houses or on board vessels of citizens of the United States, they shall not be harboured or concealed, but shall be delivered up to justice, on due requisition by the Chinese local officers addressed to those of the United States. The merchants, seamen, and other citizens of the United States shall be under the superintendence of the appropriate

officers of their Government. If individuals of either nation commit acts of violence or disorder, use arms to the injury of others, or create disturbances endangering life, the officers of the two Governments will exert themselves to enforce order and to maintain the public peace by doing impartial justice in the premises.

Article XXIV.—Where there are debts due by subjects of China to citizens of the United States, the latter may seek redress in law ; and on suitable representations being made to the local authorities through the Consul, they will cause due examination in the premises, and take proper steps to compel satisfaction. And if citizens of the United States be indebted to subjects of China the latter may seek redress by representation through the Consul, or by suit in the Consular Court. But neither Government will hold itself responsible for such debts.

Article XXVII.—All questions in regard to rights, whether of property or person, arising between citizens of the United States in China shall be subject to the jurisdiction and regulated by the authorities of their own Government ; and all controversies occurring in China between citizens of the United States and the subjects of any other Government shall be regulated by the Treaties existing between the United States and such Governments respectively, without interference on the part of China.

Article XXVIII.—If controversies arise between citizens of the United States and subjects of China which cannot be amicably settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction. The extortion of illegal fees is expressly prohibited. Any peaceable persons are allowed to enter the Court in order to interpret lest injustice be done.

APPENDIX XXXIII

RUSSIAN TREATIES WITH CHINA, GUARANTEEING EXTRATERRITORIAL RIGHTS

(Terminated 1921 and 1924)

(1) Treaty of Peking, November 2 (14th), 1860

Article VIII.—Les marchands russes en Chine et les Chinois en Russie sont placés sous la protection spéciale des deux Gouvernements. Pour surveiller les marchands et prévenir les malentendus qui pourraient survenir entre eux et les habitants du pays, il est loisible au Gouvernement russe de nommer dès à présent des Consuls à Kachgar et à Ourga, sur la base des règles adoptées pour Ili et Tarbagatai. Le Gouvernement chinois peut également, s'il le désire, nommer des Consuls dans les capitales et autres villes de l'Empire de Russie.

Les Consuls de l'une et de l'autre Puissance sont logés dans des édifices construits aux frais de leurs Gouvernements respectifs. Toutefois, il ne leur est pas défendu de louer, si cela leur convient, des logements chez les habitants du pays.

Dans leurs relations avec les autorités locales, les Consuls des deux Puissances observent une égalité parfaite, en exécution de l'Article II du Traité de Tien-tsin. Toutes les affaires concernant les marchands de l'un et de l'autre Empire sont examinées par eux de gré à gré ; les crimes et délits doivent être jugés, comme il est réglé par l'Article VII du Traité de Tien-tsin, d'après les lois de l'Empire dont le coupable est sujet.

Les litiges, revendications et autres malentendus de même nature, survenant entre marchands à propos d'affaires commerciales, seront réglés par les marchands eux-mêmes, au moyen d'arbitres choisis parmi eux ; les Consuls et les autorités locales doivent se borner à coopérer à l'arrangement à l'amiable, sans prendre aucune responsabilité relativement aux revendications.

Dans les lieux où le commerce est autorisé, les marchands de l'un et de l'autre Empire peuvent contracter des engagements par écrit pour des commandes de marchandises, la location de boutiques, maisons, etc., et les présenter à la légalisation du Consulat et de l'administration locale. En cas de non-exécution d'un engagement écrit, le Consul et le chef local prennent des mesures pour amener les parties à remplir exactement leurs obligations.

Les contestations qui ne se rapportent point à des affaires de commerce entre marchands, telles que litiges, plaintes, etc., sont jugées de consentement mutuel par le Consul et le chef local, et les délinquants sont punis d'après les lois de leur pays.

En cas de recel d'un sujet russe parmi les Chinois, ou de sa fuite dans l'intérieur du pays, l'autorité locale, aussitôt après en avoir été informée par le Consul russe, prend immédiatement des mesures pour faire rechercher le fugitif, et aussitôt après l'avoir découvert le remet au Consulat russe. La même marche doit également être observée relativement à tout sujet chinois qui se cacherait chez des Russes ou se serait enfui en Russie.

Dans les cas de crimes graves, tels que meurtre, brigandage avec de graves blessures, attentat contre la vie, incendie prémédité, etc., après enquête, si le coupable est Russe, il est envoyé en Russie pour être traité selon les lois de son pays, et s'il est Chinois, sa punition lui est infligée par l'autorité du lieu où le crime a été commis, ou bien, si les lois de l'État l'exigent, le coupable est envoyé dans une autre ville ou une autre province pour y recevoir son châtiment.

En cas de crime, quelle qu'en soit la gravité, le Consul et le chef local ne peuvent prendre les mesures nécessaires que relativement au coupable appartenant à leur pays, et ni l'un ni l'autre n'a le droit d'incarcérer ni de juger séparément, et encore moins de châtier un individu non-sujet de son Gouvernement.

Article X.—Dans l'instruction et la décision des affaires de frontières,

de quelque importance qu'elles soient, les chefs des frontières se conformeront aux règles énoncées en l'Article VIII du présent Traité ; quant aux enquêtes concernant les sujets de l'un et de l'autre Empire, et aux châtiments à leur infliger, ils s'effectueront, ainsi qu'il est dit en l'Article VII du Traité de Tien-tsin, d'après les lois du pays auquel appartient le coupable.

En cas de passage, détournement ou enlèvement de bétail au-delà de la frontière, les autorités locales, aussitôt qu'elles en auront été informées et que les traces auront été indiquées au gardien du poste frontière le plus proche, enverront des hommes chargés de faire des recherches. Le bétail retrouvé sera immédiatement restitué, et s'il en manque quelques pièces, répétition en sera exercée conformément aux lois ; mais dans ce cas l'indemnité à payer ne doit pas être élevée à plusieurs fois la valeur du bétail manquant (ainsi que cela se pratiquait auparavant).

En cas de fuite d'un individu au-delà des frontières, à la première nouvelle, des mesures sont immédiatement prises pour rechercher le transfuge. Le fugitif saisi est livré sans délai, avec tous les objets qui lui appartiennent, à l'autorité de la frontière : l'examen des motifs de la fuite et le jugement de l'affaire elle-même s'effectuent par l'autorité locale du pays auquel appartient le transfuge, la plus rapprochée des frontières. Pendant tout le temps de son séjour au-delà des frontières, depuis son arrestation jusqu'à son extradition, le transfuge est convenablement nourri et, en cas de besoin, vêtu ; la garde qui l'accompagne doit le traiter avec humanité et ne doit pas se permettre d'actes arbitraires à son égard. On devra en agir de même à l'égard du transfuge au sujet duquel il n'aurait été donné aucun avis.

(2) Treaty of St. Petersburg, February 12 (24th), 1881

Article XI.—Les Consuls russes en Chine communiqueront, pour affaires de service, soit avec les autorités locales de la ville de leur résidence soit avec les autorités supérieures de l'arrondissement ou de la province, suivant que les intérêts qui leur sont respectivement confiés, l'importance des affaires à traiter et leur prompt expédition l'exigeront. La correspondance entre eux se fera sous forme de lettres officielles. Quant aux règles d'étiquette à observer lors de leurs entrevues, et, en général, dans leurs relations, elles seront basées sur les égards que se doivent réciproquement les fonctionnaires de deux Puissances amies.

Toutes les affaires qui surgiront sur territoire chinois, au sujet de transactions commerciales ou autres, entre les ressortissants des deux États, seront examinées et réglées, d'un commun accord, par les Consuls et les autorités chinoises.

Dans les litiges en matière de commerce, les deux parties pourront terminer leurs différends à l'amiable, au moyen d'arbitres choisis de part et d'autre. Si l'entente ne s'établit pas par cette voie, l'affaire sera examinée et réglée par les autorités des deux États.

Les engagements contractés par écrit, entre sujets russes et chinois, relativement à des commandes de marchandises, au transport de

celles-ci, à la location de boutiques, de maisons et d'autres emplacements, ou relatifs à d'autres transactions du même genre, peuvent être présentés à la légalisation des consulats et des administrations supérieures locales qui sont tenus de légaliser les documents qui leur sont présentés. En cas de non-exécution des engagements contractés, le Consul et les autorités chinoises aviseront aux mesures capables d'assurer l'exécution de ces obligations.

Article XVII.—Des divergences d'opinion s'étant produites jusqu'ici dans l'application de l'Article X du Traité conclu à Peking en 1860, il est établi par les présentes que les stipulations de l'Article susdit, relatives aux répétitions à exercer, en cas de vol et de détournement de bétail au-delà de la frontière, seront, à l'avenir, interprétées dans ce sens, que lors de la découverte d'individus coupables de vol ou de détournement de bétail, ils seront condamnés à payer la valeur réelle du bétail qu'ils n'auront pas restitué. Il est entendu qu'en cas d'insolvabilité des individus coupables de vol de bétail, l'indemnité à payer ne saurait être mise à la charge des autorités locales.

Les autorités frontières des deux États poursuivront, selon toute la rigueur des lois de leur pays, les individus coupables de détournement ou de vol de bétail, et devront prendre les mesures qui dépendront d'elles pour la restitution, à qui de droit, du bétail détourné ou qui aurait passé la frontière.

Les traces du bétail détourné ou qui aurait passé la frontière peuvent être indiquées, non seulement aux gardiens des postes frontières, mais aussi aux anciens des villages les plus proches.

APPENDIX XXXIV

EXTRATERRITORIAL PROVISIONS OF THE GERMAN TREATY OF TIENTSIN, 1861

(Abrogated 1917 and 1919)

Article XXXII.—S'il arrive que des matelots ou d'autres individus désertent des bâtiments de guerre ou s'évadent des navires de commerce d'un des États Allemands contractants, l'autorité Chinoise, sur la réquisition de l'agent consulaire ou, à son défaut, du capitaine, prendra les mesures nécessaires pour découvrir le déserteur ou fugitif et le restituer sur-le-champ entre les mains de l'agent consulaire ou du capitaine.

Pareillement, si des Chinois, déserteurs ou prévenus de quelque crime, vont se réfugier dans des maisons ou à bord d'un navire appartenant à des sujets Allemands, l'autorité locale s'adressera à l'agent-consulaire Allemand qui prendra immédiatement les mesures nécessaires pour que leur extradition soit effectuée.

Article XXXIII.—Dans le cas où des navires appartenants à

un des États Allemands contractants seraient pillés par des pirates dans des parages dépendant de la Chine, il sera du devoir des autorités Chinoises de ne rien négliger pour que les voleurs soient arrêtés et punis. Les marchandises enlevées, en quelque lieu et dans quelque état qu'elles se trouvent, seront déposées entre les mains de l'agent consulaire qui les fera remettre aux ayants-droit. Si l'on ne peut s'emparer des coupables, ni recouvrer la totalité des objets volés, les fonctionnaires Chinois subiront la peine infligée par la loi en pareille circonstance, mais ils ne sauraient être rendus pécuniairement responsables.

Article XXXIV.—Toutes les fois qu'un sujet d'un des États Allemands contractants voudra recourir à l'autorité Chinoise, sa représentation devra d'abord être soumise à l'agent consulaire qui, suivant qu'il la trouvera raisonnable et convenablement rédigée, lui donnera suite ou la rendra afin d'être modifiée.

Les Chinois de leur côté, lorsqu'ils auront à s'adresser au consulat, devront suivre une marche analogue auprès de l'autorité Chinoise, laquelle agira de la même manière.

Article XXXV.—Lorsqu'un sujet des États Allemands contractants aura quelque motif de plainte contre un Chinois, il devra d'abord se rendre chez l'agent consulaire et lui exposer ses griefs. L'agent consulaire, après avoir examiné l'affaire, s'efforcera de l'arranger à l'amiable. De même quand un Chinois aura à se plaindre d'un sujet d'un des États Allemands contractants, l'agent consulaire écoutera sa réclamation avec intérêt et cherchera à ménager un arrangement à l'amiable. Mais si dans l'un ou l'autre cas la chose était impossible, l'agent consulaire requerra l'assistance du fonctionnaire Chinois compétent, et tous deux conjointement statueront suivant l'équité.

Article XXXVI.—Les Autorités Chinoises accorderont toujours la plus complète protection aux personnes et à la propriété des sujets Allemands, et particulièrement lorsque ceux-ci seraient l'objet de quelque insulte ou violence. Dans tous les cas d'incendie, de pillage ou de destruction, les autorités locales enverront en toute hâte la force armée pour dissiper l'émeute, s'emparer des coupables et les livrer à toute la sévérité des lois : le tout sans préjudice des poursuites à exercer, par qui de droit, contre les coupables quels qu'ils soient pour indemnisation des pertes éprouvées.

Article XXXVII.—Si un sujet Chinois, débiteur d'un sujet des États Allemands contractants, manquait à payer ses dettes ou s'éloignait frauduleusement, l'autorité Chinoise, sur la requête du créancier, ne négligera aucun moyen pour arrêter le fugitif et contraindre le débiteur à payer sa dette.

De même les autorités Allemandes feront tout leur possible pour forcer les sujets Allemands à acquitter leurs dettes envers des sujets Chinois, et pour les faire comparaître en justice, s'ils se sont éloignés frauduleusement. Mais en aucun cas ni le gouvernement Chinois ni les gouvernements des États Allemands contractants ne sauraient être rendus responsables des dettes de leurs sujets.

Article XXXVIII.—Les sujets Chinois qui se rendront coupables d'une action criminelle contre un sujet d'un des États Allemands contractants seront arrêtés par les autorités Chinoises et punis suivant les lois de la Chine.

Les sujets d'un des États Allemands contractants qui commettraient un crime contre un sujet Chinois, seront arrêtés par l'agent consulaire et punis suivant les lois de l'État, auquel ils appartiennent.

Article XXXIX.—Toutes les contestations de droits, soit de personne, soit de propriété, qui pourraient s'élever entre des sujets des États Allemands contractants, relèveront de la juridiction des autorités de ces États. En cas de différends survenus entre des sujets des États Allemands contractants et des étrangers, l'autorité Chinoise n'aura point à s'en mêler.

APPENDIX XXXV

EXTRATERRITORIAL PROVISIONS OF THE DANISH TREATY OF TIENTSIN, 1863

Article XV.—All questions in regard to rights, whether of property or person, arising between Danish subjects shall be subject to the jurisdiction of the Danish authorities, and all controversies occurring in China between subjects of Denmark and the subjects of any other Foreign Power shall be regulated by the Treaties existing between Denmark and such Powers respectively, without interference on the part of China. But if in such controversies Chinese subjects be parties involved, the Chinese authority shall be assessor in all proceedings, as in the cases provided for by Articles XVI and XVII of this Treaty.

Article XVI.—Chinese subjects who may be guilty of any criminal act towards Danish subjects shall be arrested and punished by the Chinese authorities according to the laws of China.

Danish subjects who may be guilty of any criminal act towards Chinese subjects shall be arrested and punished by the Danish authorities according to the laws of their country, and in the form and manner to be hereafter prescribed by the Danish Government.

The Chinese Government will on its part similarly control Chinese subjects.

Justice shall be equitably and impartially administered on both sides.

Article XVII.—A Danish subject having reason to complain of a Chinese must proceed to the Consulate and state his grievance; the Consul will inquire into the merits of the case and do his utmost to arrange it amicably.

In like manner, if a Chinese have reason to complain of a Danish

subject the Consul shall no less listen to his complaint and endeavour to settle it in a friendly manner.

If disputes take place of such a nature that the Consul cannot arrange them amicably, then he shall request the assistance of the Chinese authorities, that they may together examine into the merits of the case and decide it equitably.

Article XVIII.—The Chinese authorities shall at all times afford the fullest protection to the persons and property of Danish subjects whenever these shall have been subjected to insult or violence. In cases of incendiarism or robbery the local authorities shall at once take the necessary steps for the recovery of the stolen property, the suppression of disorder, and the arrest of the guilty parties, whom they will punish according to law. But if the authority whose charge it is shall fail to arrest those guilty of the above acts, all that can be required of the Chinese Government is that it shall punish the said authority according to the laws of China.

Article XIX.—If any Danish merchant vessel, while within Chinese waters, be plundered by robbers or pirates, it shall be the duty of the Chinese authorities to use every endeavour to capture and punish the said robbers or pirates, and to recover the stolen property, that it may be handed over to the Consul for restoration to the owner. But if the authorities whose charge it is shall fail to seize the guilty parties and recover the stolen property, all that can be required of the Chinese Government is that it shall punish the said authority according to the laws of China ; it is not to indemnify the persons robbed.

Article XX.—If any Danish vessel be at any time wrecked or stranded on the coast of China, or be compelled to take refuge in any port within the dominions of the Emperor of China, the Chinese authorities, on being apprised of the fact, shall immediately adopt measures for its relief and security ; the persons on board shall receive friendly treatment, and shall be furnished, if necessary, with the means of conveyance to the nearest Consular station.

Article XXI.—If Chinese offenders take refuge in the houses or on board the vessels of Danish subjects at the open ports they shall not be harboured or concealed, but shall be delivered up on due requisition by the Chinese authorities, addressed to the Danish Consul.

Article XXII.—Should any Chinese subject fail to discharge debts incurred to a Danish subject, or should he fraudulently abscond, the Chinese authorities will do their utmost to effect his arrest and enforce recovery of the debts. The Danish authorities will likewise do their utmost to bring to justice any Danish subject fraudulently absconding or failing to discharge debts incurred by him to a Chinese subject. But on neither side is Government to indemnify the creditor.

APPENDIX XXXVI

EXTRATERRITORIAL PROVISIONS OF THE DUTCH TREATY OF
TIENTSIN, 1863

Article VI.—All disputes arising between Netherlands subjects shall be referred to the Netherlands Consul without interference of the Chinese authorities. In case of disputes between Netherlands subjects and Chinese, the authorities of either nation shall endeavour to persuade the contending parties to come to an amicable settlement, but if they do not succeed, the respective authorities shall consult together and decide according to law. Chinese found guilty of any criminal offence against Netherlands subjects shall be taken before their own authorities for punishment ; and on the same principle, all Netherlands subjects who commit crimes against Chinese shall be judged by the Netherlands authorities according to their own laws ; on both sides judgment will be given with rigour and impartiality.

Netherlands delinquents who take refuge in the interior, or Chinese delinquents taking refuge in the houses or ships belonging to Netherlands subjects, shall, after official requisition being made, and after mutual cognizance of the case being taken, be delivered up without delay to their respective lawful judges ; they shall not be harboured or concealed.

If any Chinese subject, failing to discharge debts incurred to a Netherlands subject, should abscond, and the Chinese authorities find means to trace the fraudulent debtor he shall be arrested and prosecuted for the money. Reciprocally, all Netherlands subjects, absconded on account of debts incurred to Chinese, shall, if possible, be proceeded against by the Netherlands authorities. But neither of the two Governments shall be held answerable for the recovery of such debts.

Article VII.—The Chinese Government engages at all times to protect the persons and property of Netherlands subjects, and in cases of assault or robbery, to take forthwith the necessary steps for tracing and recovering the stolen property and for bringing the offenders to justice.

Should any Netherlands vessel, whilst in Chinese waters, be plundered by pirates, the Chinese authorities will do all they can to punish the offenders and recover their booty, to be returned to the lawful owner through the intermedium of the nearest Netherlands Consulate. But they shall not be held answerable for such recovery.

If any Netherlands vessel should suffer shipwreck on the coast of China, or be compelled to take refuge in any harbour in the Chinese Empire, the Chinese authorities will devise measures to save and protect the persons and property endangered and if necessary provide them with the means to reach the nearest Netherlands Consulate.

APPENDIX XXXVII

EXTRATERRITORIAL PROVISIONS OF THE SPANISH
TREATY OF TIENTSIN, 1864

Article XII.—All questions in regard to rights, whether of property or person, arising between Spanish subjects shall be submitted to the jurisdiction of the Spanish Consuls.

All controversies occurring in China between Spanish subjects and those of any other foreign nation shall be regulated according to the Treaties existing between Spain and such nations respectively, without the interference of the Chinese authorities. Should, however, Chinese subjects be found to be concerned in such controversies, the local authority shall be Assessor in the judicial proceedings, as in the cases provided for by Articles XIII and XIV of this Treaty.

Article XIII.—Chinese subjects who shall be guilty of any criminal act towards Spanish subjects shall be imprisoned and punished by the Chinese authorities according to the laws of China, such act being previously reported by the Spanish Consul.

Spanish subjects guilty of any crime in China shall be tried by the Consul or any other Spanish public functionary authorised thereto, according to the laws of Spain, on previous notice received from the Chinese authorities.

Should any grave offence take place, such as homicide, robbery accompanied with dangerous wounds, attempt upon anyone's life, premeditated incendiarism, etc., the criminal, after having been summarily dealt with, shall be sent to Manila, in order to be punished there according to the laws of Spain.

Article XIV.—Spanish subjects who may have suffered offence from Chinese subjects shall lay their complaints before the Consul, who will take due cognizance of the case and will use all his efforts to settle it amicably. Likewise, when a Chinese subject shall have to complain of a Spaniard, the Consul will listen to his complaint and will do all he possibly can to re-establish harmony between the two parties. If, however, the dispute be of such a nature that it cannot be settled in that way, then the Consul shall request the assistance of the Chinese authorities, that they may conjointly inquire into the case and decide it with equity.

Article XV.—The Chinese authorities are bound to afford the fullest protection to the persons and property of Spanish subjects, whenever these may be exposed to insult or wrong. In case of robbery or incendiarism the local authorities shall at once take the necessary steps for the recovery of the stolen property, the suppression of disorder, and the arrest of the guilty parties, whom they will punish according to law.

Article XVI.—If any Spanish merchant vessel be plundered by pirates or thieves within Chinese waters, the Chinese authorities are

to employ their utmost exertions to seize and punish the said robbers and to recover the stolen property, which shall be restored to the owner through the Consul. But if the Chinese authority, whose duty it is, shall fail to seize the guilty parties and recover the stolen property, he shall be punished according to the laws of China, but shall not be bound to indemnify the persons who have been robbed.

Article XVII.—If any Spanish vessel be shipwrecked on the coast of China, or be compelled to take refuge in any of the ports of the Empire, the Chinese authorities, on receiving notice of the fact, shall immediately provide the necessary assistance and protection, afford friendly treatment to the crew, and, if necessary, furnish them with the means of conveyance to the nearest Consulate.

Article XVIII.—All Chinese subjects convicted of crime who, at any of the open ports of China, seek an asylum at a house or on board of a ship belonging to a Spanish subject, far from being received and concealed therein, shall, on the contrary, be delivered up to the Chinese authorities on their applying to the Spanish Consul at the same port.

In the same manner, if any Spanish sailor desert from his ship and take refuge at a house or on board of a ship belonging to a Chinese, the local authorities, on requisition addressed to them by Her Catholic Majesty's Agent, shall at once take the necessary measures to discover and arrest the fugitive, in order to deliver him up to the said Agent of the Spanish Government.

Article XIX.—Should any Chinese subject fail to discharge debts incurred to a Spaniard, or should he fraudulently abscond, the Chinese authorities will do their utmost to effect his arrest and enforce the payment of the debts. The Spanish authorities will proceed in the like manner against any Spaniard who omits to pay a debt incurred to a Chinese subject ; but the respective Governments will not be bound in any way to indemnify the creditor.

APPENDIX XXXVIII

EXTRATERRITORIAL PROVISIONS OF THE BELGIAN TREATY OF PEKING, 1865

Article XII.—Tout Belge qui, conformément aux stipulations de l'article précédent, arrivera dans l'un des ports ouverts au commerce étranger, pourra, quelle que soit la durée de son séjour, y louer des maisons et des magasins pour déposer ses marchandises, ou bien affermer des terrains et y bâtir lui-même des maisons et des magasins. Les Belges pourront, de la même manière, établir des églises, des hôpitaux, des hospices, des écoles et des cimetières. Le cas échéant, l'autorité locale, après s'être concertée avec le consul, désignera les quartiers les plus convenables pour la résidence des Belges et les endroits dans lesquels pourront avoir lieu les constructions précitées.

Le prix des loyers et des fermages sera librement débattu entre les parties intéressées, et réglé, autant que faire se pourra, conformément à la moyenne des prix locaux.

Les autorités chinoises empêcheront leurs nationaux de surfaire ou d'exiger des prix exorbitants, et le consul veillera, de son côté, à ce que les Belges n'usent d'aucune contrainte pour forcer le consentement des propriétaires chinois.

Article XIV.—Les propriétés de toute nature appartenant à des Belges dans l'Empire chinois seront considérées par les chinois comme inviolables et seront toujours respectées par eux. Les autorités chinoises ne pourront, quoiqu'il arrive, mettre embargo sur les navires belges, ni les frapper de réquisition pour quelque service public ou privé que ce puisse être.

Article XVI.—Lorsqu'un Belge aura quelque motif de plainte ou quelque réclamation à formuler contre un Chinois, il devra d'abord exposer ses griefs au consul, qui, après avoir examiné l'affaire, s'efforcera de l'arranger à l'amiable. De même, quand un Chinois aura à se plaindre d'un Belge, le consul écoutera ses réclamations avec intérêt et cherchera à ménager un arrangement à l'amiable ; mais si dans l'un ou l'autre cas la chose était impossible, le consul requerra l'assistance du fonctionnaire chinois compétent, et tous deux, après avoir examiné conjointement l'affaire, statueront suivant l'équité.

Article XVII.—Les autorités chinoises accorderont toujours la plus complète protection aux personnes et à la propriété des sujets belges, et particulièrement lorsque ceux-ci seraient l'objet de quelque insulte ou violence. Dans tous les cas d'incendie, de pillage ou de destruction les autorités locales prendront les mesures nécessaires pour le recouvrement des objets volés et enverront en toute hâte la force armée pour dissiper l'émeute, s'emparer des coupables et les livrer à toute la sévérité des lois. Si les fonctionnaires compétents négligeaient d'arrêter les coupables, le Gouvernement chinois leur imposerait la peine infligée par les lois du pays.

Article XVIII.—Si un sujet chinois débiteur d'un Belge manquait à payer ses dettes ou s'éloignait frauduleusement, l'autorité chinoise, sur la requête du créancier, ne négligera aucun moyen pour arrêter le fugitif et contraindre le débiteur à payer sa dette.

De même les autorités belges feront tout leur possible pour obliger les Belges à acquitter leurs dettes envers les Chinois, et pour les faire comparaître en justice, s'ils se sont éloignés frauduleusement. Mais en aucun cas ni le Gouvernement chinois ni le Gouvernement belge ne sauraient être rendus responsables des dettes de leurs sujets respectifs.

Article XIX.—Les sujets chinois qui se rendraient coupables d'une action criminelle envers un Belge seront arrêtés par les autorités chinoises et punis suivant les lois de la Chine.

Les sujets belges qui commettraient un crime envers un sujet chinois seront arrêtés à la diligence du consul, et celui-ci prendra toutes les mesures nécessaires pour que les prévenus soient livrés à l'action

régulière des lois belges, dans la forme et suivant les dispositions qui seront ultérieurement déterminées par le Gouvernement belge.

Il en sera de même dans toutes les circonstances non prévues dans la présente Convention, le principe étant que, pour la répression des crimes et délits commis par eux en Chine, les Belges seront constamment régis par les lois belges.

Le Gouvernement chinois veillera de son côté à la répression des crimes et délits commis par des Chinois envers des Belges.

La justice sera rendue équitablement et impartialement de part et d'autre.

Article XX.—Les Belges en Chine dépendront également pour toutes les difficultés ou les contestations qui pourraient s'élever entre eux de la juridiction belge. En cas de difficultés survenues entre Belges et étrangers, l'autorité chinoise n'aura point à s'en mêler.

Article XLIII.—S'il arrive que des matelots ou autres individus désertent des bâtiments de guerre ou s'évadent des navires de commerce belges, l'autorité chinoise, sur la réquisition du consul ou, à son défaut, du capitaine, fera tous ses efforts pour découvrir et restituer sur le champ, entre les mains de l'un ou de l'autre, les susdits déserteurs ou fugitifs.

Pareillement, si des Chinois déserteurs ou prévenus de quelque crime vont se réfugier dans des maisons belges ou à bord des navires appartenant à des Belges, l'autorité locale s'adressera au consul, qui, sur la preuve de la culpabilité des prévenus, prendra immédiatement les mesures nécessaires pour que leur extradition soit effectuée. De part et d'autre, on évitera soigneusement tout recel et toute connivence.

Article XLIV.—Dans le cas où des navires de commerce belges seraient attaqués ou pillés par les pirates dans des parages dépendants de la Chine, l'autorité civile et militaire du lieu le plus rapproché, dès qu'elle aura connaissance du fait, en poursuivra activement les auteurs, et ne négligera rien pour qu'ils soient arrêtés et punis conformément aux lois. Les marchandises enlevées, en quelque lieu et dans quelque état qu'elles se trouvent, seront remises entre les mains du consul, qui se chargera de les restituer aux ayants-droit. Si l'on néglige de s'emparer des coupables ou de recouvrer la totalité des objets volés, les fonctionnaires chinois subiront la peine infligée par la loi en pareille circonstance ; mais ils ne sauraient être rendus pécuniairement responsables.

APPENDIX XXXIX

EXTRATERRITORIAL PROVISIONS OF THE ITALIAN TREATY OF PEKING, 1866

Article XV.—All questions in regard to rights, whether of property or person, arising between Italian subjects shall be subject to the jurisdiction of the Italian authorities, and all controversies occurring

in China between subjects of Italy and the subjects of any other Foreign Power shall be regulated by the Treaties existing between Italy and such Powers respectively, without interference on the part of China. But if in such controversies Chinese subjects be parties involved, the Chinese authority shall be assessor in all proceedings, as in the cases provided for by Articles XVI and XVII of this Treaty.

Article XVI.—Chinese subjects who may be guilty of any criminal act towards Italian subjects shall be arrested and punished by the Chinese authorities according to the laws of China.

Italian subjects who may be guilty of any criminal act towards Chinese subjects shall be arrested and punished by the Italian authorities according to the laws of their country, and in the form and manner to be hereafter prescribed by the Italian Government.

The Chinese Government will on its part similarly control Chinese subjects.

Justice shall be equitably and impartially administered on both sides.

Article XVII.—An Italian subject having reason to complain of a Chinese must proceed to the Consulate and state his grievance. The Consul will inquire into the merits of the case, and do his utmost to arrange it amicably. In like manner, if a Chinese have reason to complain of an Italian subject, the Consul shall no less listen to his complaint and endeavour to settle it in a friendly manner.

If disputes take place of such a nature that the Consul cannot arrange them amicably, then he shall request the assistance of the Chinese authorities, that they may together examine into the merits of the case and decide it equitably.

Article XVIII.—The Chinese authorities shall at all times afford the fullest protection to the persons and property of Italian subjects whenever these shall have been subjected to insult or violence. These authorities will not in any case be authorised to place an embargo on Italian vessels or requisition them for any public or private service. In all cases of incendiarism or robbery the local authorities shall at once take the necessary steps for the recovery of the stolen property, the suppression of disorder, and the arrest of the guilty parties, whom they will punish according to law. But if the local authorities shall fail to arrest the guilty parties, all that can be required of the Chinese Government is that it shall punish the said authorities according to the laws of China.

Article XIX.—If any Italian merchant vessel, while within Chinese waters, be plundered by robbers or pirates, it shall be the duty of the Chinese authorities to use every endeavour to capture and punish the said robbers or pirates, and to recover the stolen property, that it may be handed over to the Consul for restoration to the owner. But if the authority whose charge it is shall fail to seize the guilty parties and recover the stolen property, all that can be required of the Chinese Government is that it shall punish the said authority according to the laws of China ; it is not to indemnify the persons robbed.

Article XX.—If any Italian vessel be at any time wrecked or stranded on the coast of China, the Chinese authorities, on being apprised of the fact, shall immediately adopt measures for its relief and security ; the persons on board shall receive friendly treatment, and shall be furnished, if necessary, with the means of conveyance to the nearest Consular station.

Article XXII.—If Chinese offenders take refuge in Italian houses or on board Italian ships, they shall not be harboured or concealed, but shall be delivered up on due requisition by the Chinese authorities addressed to the Italian Consul.

Should Italian sailors or other individuals desert from Italian warships or merchant vessels, the Chinese authorities, at the request of the Consul or the Captain or Master of the ship, will undertake the immediate arrest and delivery on board the ship concerned of the deserters.

APPENDIX XL

EXTRATERRITORIAL PROVISIONS OF THE AUSTRO-HUNGARIAN TREATY OF PEKING, 1869

(Abrogated 1917 and 1920)

Article XXXV.—If any Austro-Hungarian merchant vessel be at any time wrecked or stranded on the coast of China, or be compelled to take refuge in any port within the dominions of the Emperor of China, the Chinese authorities, on being apprised of the fact, shall immediately adopt measures for its relief and security ; the persons on board shall receive friendly treatment, and shall be furnished, if necessary, with the means of conveyance to the nearest Consular station.

Article XXXVI.—If any sailors or other individuals desert from Austro-Hungarian men-of-war or merchant vessels, the Chinese authorities, upon requisition by the Consular Officer, or by the captain where there is no Consul, shall take the necessary steps to search for the deserter or fugitive, and to deliver him up to the Consular Officer or to the captain.

In like manner, if Chinese deserters or criminals under prosecution take refuge in the houses or on board the vessels of Austro-Hungarian subjects, the local authorities may apply to the Imperial and Royal Consular Officer in order to effect their extradition.

Article XXXVII.—If any Austro-Hungarian vessel, while within Chinese waters, be plundered by pirates, it shall be the duty of the Chinese authorities to use every endeavour to capture and punish the said pirates.

The stolen goods shall be handed over to the Consular Officer concerned, who will restore them to the rightful owners. If the

authorities fail to seize the pirates and recover the stolen property, they shall be punished according to the laws of China, but they shall not be required to refund the stolen property.

Article XXXVIII.—An Austro-Hungarian subject having reason to complain of a Chinese must, in the first instance, repair to the Consular Officer and state his grievance; the Consular Officer will then inquire into the merits of the case and do his utmost to arrange it amicably.

In like manner, if a Chinese have reason to complain of an Austro-Hungarian subject, the Consular Officer shall no less listen to his complaint and endeavour to settle it in a friendly manner.

But if in any case such an arrangement cannot be arrived at, then the Consular Officer shall request the assistance of the Chinese Authorities, so that they may together examine into the merits of the case and decide it equitably.

Article XXXIX.—Chinese subjects who shall be guilty of any criminal act towards Austro-Hungarian subjects shall be arrested by the Chinese authorities and punished according to Chinese law.

Austro-Hungarian subjects who shall be guilty of any criminal act towards Chinese subjects shall in like manner be arrested by the Consular Officer and punished according to Austro-Hungarian law.

Article XL.—All questions in regard to rights, whether of property or person, arising between Austro-Hungarian subjects shall be subject to the jurisdiction of the Imperial and Royal Authorities, and all controversies occurring in China between Austro-Hungarian subjects and the subjects of any other French Power shall be regulated by the Treaties existing between the Austro-Hungarian Monarchy and such Foreign Powers respectively, without interference on the part of the Chinese Government.

But if in such controversies Chinese subjects be parties involved, the Chinese Authority shall be assessor in all proceedings, as provided for in Articles XXXVIII and XXXIX of the present Treaty.

Article XLI.—The Chinese authorities shall at all times afford the fullest protection to the persons and property of Austro-Hungarian subjects, especially whenever these shall have been subjected to insult or violence.

In all cases of robbery or incendiarism the local authorities shall take the necessary steps for the recovery of the stolen property, the suppression of disorder, and the arrest of the guilty parties, whom they will punish according to law. But if the local authorities shall fail to arrest the guilty parties, no other compensation can be required from the Chinese Government than the punishment, according to Chinese law, of the said authorities.

Article XLII.—Should any Chinese subject fail to discharge debts incurred to an Austro-Hungarian subject, or should he fraudulently abscond, the Chinese authorities will do their utmost to effect his arrest and enforce recovery of the debts.

The Imperial and Royal authorities will likewise do their utmost

to bring to justice any Austro-Hungarian subject fraudulently absconding or failing to discharge debts incurred by him to a Chinese subject.

But in no case shall either the Chinese Government or the Government of His Imperial and Royal Apostolic Majesty be held responsible for debts contracted by their subjects respectively.

APPENDIX XLI

EXTRATERRITORIAL PROVISIONS OF JAPANESE TREATIES WITH CHINA

(I) TREATY OF TIENTSIN, 1871 (*Replaced by Treaty of Peking, 1896*)

Article III.—The system of government and the penal enactments of the two Governments being different from each other each shall be allowed to act in entire independence. There shall be no interference offered, nor shall requests for innovations be obtruded. Each shall aid the other in enforcement of the laws, nor shall either allow its subjects to entice the people of the other country to commit acts in violation of the laws.

Article VIII.—At the ports appointed in the territory of either Government it will be competent for the other to station Consuls for the control of its own merchant community. All suits in which they (the Consul's nationals) are the only parties, the matter in dispute being money or property, it will fall to the Consul to adjudicate according to the law of his own State. In mixed suits, the plaint having been laid before the Consul, he will endeavour in the first instance to prevent litigation by friendly counsel; if this be not possible, he will write officially to the local authority, and in concert with him will fairly try the case and decide it. Where acts of theft or robbery are committed, and where debtors abscond, the local authorities can do no more than make search for and apprehend the guilty parties; they shall not be held liable to make compensation.

Article IX.—At any of the ports appointed at which no Consul shall have been stationed, the control and care of the traders resorting thither shall devolve on the local authorities. In case of the commission of any act of crime, the guilty party shall be apprehended, and the particulars of his offence communicated to the Consul at the nearest port, by whom he shall be tried and punished according to law.

Article X.—At the ports named in either country the officials and people of the other shall be at liberty to engage natives for service, or as artisans, or to attend to commercial business. The persons so engaged shall be kept in order by the persons so engaging them, who shall not allow them to perpetrate acts of fraud under any pretext; still less shall they give rise to cause of complaint by giving ear to statements

advanced from illicit motives. In the case of any offence being committed by any person employed in the manner above mentioned, the local authority shall be at liberty to apprehend and punish the delinquent ; the employer shall not favour or protect him.

Article XII.—If any subject of either Power, having violated the law of his own country, secrete himself in any official building, merchant vessel, or warehouse of the other State, or escape to any place in the territory of the other, on official application being made by the authority of the State of which such offender is a subject to the authority of the other, the latter shall immediately take steps for the arrest of the offender, without show of favour. Whilst in custody he shall be provided with food and clothing, and shall not be subjected to ill-usage.

Article XIII.—If any subject of either Power connect himself at any of the open Ports with lawless offenders for purposes of robbery or other wrongdoing, or if any work his way into the interior and commit acts of incendiarism, murder, or robbery, active measures for his apprehension shall be taken by the proper authority, and notice shall at the same time be given without delay to the Consul of the offender's nationality. Any offender who shall venture with weapons of a murderous nature to resist capture may be slain in the act without further consequences, but the circumstances which have led to his life being thus taken shall be investigated at an inquest which will be held by the Consul and the local authority together. In the event of the occurrence taking place in the interior, so far from the port that the Consul cannot arrive in time for the inquest, the local authority shall communicate a report of the facts of the case to the Consul.

When arrested and brought up for trial, the offender, if at a port, shall be tried by the local authority and the Consul together ; in the interior he shall be tried and dealt with by the local authority, who will officially communicate the facts of the case to the Consul.

If subjects of either Power shall assemble to the number of ten or more to foment disorder and commit excesses in the dominions of the other, or shall induce subjects of the other therein to conspire with them for the doing of injury to the other Power, the authorities of the latter shall be free at once to arrest them. If at a port, their Consul shall be informed, in order that he may take part in their trial ; if in the interior, the local authority shall duly try them, and shall officially communicate particulars to the Consul. In either case capital punishment shall be inflicted at the scene of the commission of the offence.

(2) TREATY OF COMMERCE AND NAVIGATION, PEKING, 1896

Article XIX.—If any Japanese vessel be plundered by Chinese robbers or pirates, it shall be the duty of the Chinese Authorities to use every endeavour to capture and punish the said robbers or pirates and to recover and restore the stolen property.

Article XX.—Jurisdiction over the persons and property of Japanese subjects in China is reserved exclusively to the duly authorised Japanese

Authorities, who shall hear and determine all cases brought against Japanese subjects or property by Japanese subjects, or by the subjects or citizens of any other Power, without the intervention of the Chinese Authorities.

Article XXI.—If the Chinese Authorities or a Chinese subject make any charge or complaint of a civil nature against Japanese subjects, or in respect of Japanese property in China, the case shall be heard and decided by the Japanese Authorities.

In like manner, all charges and complaints of a civil nature brought by Japanese Authorities or subjects in China against Chinese subjects, or in respect of Chinese property, shall be heard and determined by the Chinese Authorities.

Article XXII.—Japanese subjects charged with the commission of any crimes or offences in China shall be tried, and if found guilty punished, by the Japanese Authorities according to the laws of Japan.

In like manner, Chinese subjects charged with the commission of any crimes or offences against Japanese subjects in China shall be tried, and if found guilty punished, by the Chinese Authorities according to the laws of China.

Article XXIII.—Should any Chinese subject fail to discharge debts incurred to a Japanese subject, or should he fraudulently abscond, the Chinese Authorities will do their utmost to effect his arrest and enforce recovery of the debts. The Japanese Authorities will likewise do their utmost to bring to justice any Japanese subject who fraudulently absconds or fails to discharge debts incurred by him to a Chinese subject.

Article XXIV.—If Japanese subjects in China who have committed offences, or have failed to discharge debts and fraudulently abscond, should flee to the interior of China, or take refuge in houses occupied by Chinese subjects or on board of Chinese ships, the Chinese Authorities shall, at the request of the Japanese Consul, deliver them to the Japanese Authorities.

In like manner, if Chinese subjects in China who have committed offences, or have failed to discharge debts and fraudulently abscond, should take refuge in houses occupied by Japanese subjects in China, or on board of Japanese ships in Chinese waters, they shall be delivered up, at the request of the Chinese Authorities made to the Japanese Authorities.

(3) COMMERCIAL TREATY, 1903

Article IV.—In case Chinese subjects conjointly with Japanese subjects organise a partnership or company for a legitimate purpose, they shall equitably share the profits and losses with all the members according to the terms of the agreement or memorandum and articles of association and the regulations framed thereunder, and they shall be liable to the fulfilment of the obligations imposed by the said agreement or memorandum and articles of association and the regulations framed thereunder as accepted by them and as interpreted by

Japanese Courts. Should they fail to fulfil the obligations so imposed and legal action be taken against them in consequence, Chinese Courts shall at once enforce fulfilment of such obligations.

It is understood that in case Japanese subjects conjointly with Chinese subjects organise a partnership or company, they shall also equitably share the profits and losses with all the members according to the terms of the agreement or memorandum and articles of association and regulations framed thereunder. Should such Japanese subjects fail to fulfil any of the obligations imposed by the said agreement or memorandum and articles of association or by the regulations framed thereunder, Japanese Courts shall in like manner at once enforce fulfilment of such obligations by them.

Article V.—The Chinese Government agree to make and faithfully enforce such regulations as are necessary for preventing Chinese subjects from infringing registered trade marks held by Japanese subjects.

The Chinese Government likewise agree to make such regulations as are necessary for affording protection to registered copyrights held by Japanese subjects in the books, pamphlets, maps, and charts written in the Chinese language and specially prepared for the use of Chinese people.

It is further agreed that the Chinese Government shall establish registration offices where foreign trade marks and copyrights, upon application for the protection of the Chinese Government, shall be registered in accordance with the provisions of the regulations to be hereafter framed by the Chinese Government for the purpose of protecting trade marks and copyrights.

It is understood that Chinese trade marks and copyrights properly registered according to the provisions of the laws and regulations of Japan will receive similar protection against infringement in Japan.

This Article shall not be held to protect against due process of law any Japanese or Chinese subject who may be the author, proprietor, or seller of any publication calculated to injure the well-being of China.

Article XI.—The Government of China having expressed a strong desire to reform its judicial system and to bring it into accord with that of Japan and Western nations, Japan agrees to give every assistance to such reform, and will also be prepared to relinquish its extra-territorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant it in so doing.

(4) CHIENTAO AGREEMENT, 1909

Article IV.—Koreans residing north of the Tumen River and engaged in agriculture shall be subject to the jurisdiction of the Chinese officials of the territory. Chinese officials shall treat the Koreans and Chinese with equality as regards payment of taxes and in the enforcement of the laws. Chinese officials shall administer Chinese law in all civil and criminal cases where Koreans are concerned. A Japanese

Consular officer may at all times attend the court proceedings. In cases where capital punishment may be adjudged, the Japanese Consul must be notified. If the Japanese Consul can point out any irregularities in the proceedings, he may request that another official be appointed to hold a re-hearing of the case, so that justice may be obtained.

(5) JAPANESE LAW RELATING TO ADJUDICATION BY CONSULAR OFFICERS IN CHIENTAO, APRIL 5, 1910

Article 1.—The public trial of offences liable to capital punishment, or penal servitude for life or for a limited period of at least one year, or imprisonment, the preliminary examination of which has been conducted by consular officers stationed in Kanto, shall belong to the jurisdiction of the District Courts of the Residency General (*i.e.* of Korea).

Article 2.—The Minister for Foreign Affairs may, if he deems it necessary in connection with a criminal case belonging to the jurisdiction of consular officers stationed in Kanto, order the consular officer concerned to deliver the accused to a prison in Korea.

Article 3.—In cases where, in accordance with the provisions of the preceding article, the accused is delivered to a prison in Korea, the Resident General shall, if the case belongs to the jurisdiction of the district courts, cause a public procurator of the Residency General Court of Appeal having jurisdiction over the locality where the prison to which the accused is delivered is located, to apply to such district court for the designation of jurisdiction.

In connection with the application and adjudication mentioned in the preceding paragraph, the provisions of Article 33 of the Code of criminal procedure shall be applied *mutatis mutandis*.

(Article 33 of Japanese Code of criminal procedure: "A person desirous of making a motion relative to the designation of the competent Court must declare his intention in writing to the Court competent to rule.

"The Court must decide the motion according to the documents.")

Article 4.—Appeals from or protests against decisions rendered by consular officers stationed in Kanto in cases subject to the jurisdiction of a district court shall belong to the jurisdiction of a Court of Appeal of the Residency General.

Article 5.—In the cases mentioned in Articles 1 and 4, the Residency General Courts to have jurisdiction shall be determined by the Resident General.

" Supplementary Clause.

"Lawsuits and non-contentious matters accepted prior to the enforcement of this law shall be dealt with according to previous practice."

(6) TREATY RESPECTING SOUTH MANCHURIA AND EASTERN INNER
MONGOLIA, 1915

Article 2.—Japanese subjects in South Manchuria may, by negotiation, lease land necessary for erecting suitable buildings for trade and manufacture or for prosecuting agricultural enterprises.

Article 3.—Japanese subjects shall be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever.

Article 4.—In the event of Japanese and Chinese desiring jointly to undertake agricultural enterprises and industries incidental thereto, the Chinese Government may give its permission.

Article 5.—The Japanese subjects referred to in the preceding three articles, besides being required to register with the local authorities passports which they must procure under the existing regulations, shall also submit to the police laws and ordinances and taxation of China.

Civil and criminal cases in which the defendants are Japanese shall be tried and adjudicated by Chinese authorities. In either case an officer may be deputed to the court to attend the proceedings. But mixed civil cases between Chinese and Japanese relating to land shall be tried and adjudicated by delegates of both nations conjointly in accordance with Chinese law and local usage.

When, in future, the judicial system in the said region is completely reformed, all civil and criminal cases concerning Japanese subjects shall be tried and adjudicated entirely by Chinese law courts.

APPENDIX XLII

EXTRATERRITORIAL PROVISIONS OF KOREAN TREATIES WITH CHINA

(Superseded by the Japanese treaties on the annexation of Korea
by Japan, 1910)

(1) REGULATIONS FOR MARITIME AND OVERLAND TRADE BETWEEN CHINESE AND KOREAN SUBJECTS, 1882

Article I.—The Superintendent of Trade at the Northern Ports will hereafter appoint Commissioners of Trade to reside at the open ports of Korea for the special purpose of exercising jurisdiction over Chinese merchants resident there. The said officers will in their dealings with Korean officials be on the footing of perfect equality, and are to be treated with the consideration due to the observance of etiquette. In the event of important cases arising which it may not seem expedient to have settled on their own responsibility in concert with the Korean authorities, they will report such cases to the

Superintendent of Northern Trade, who will write to the King of Korea with a view to have instructions forwarded for the guidance of His Government Department. The King of Korea will also depute a high official to reside at Tientsin and detail other officers to proceed to the open ports of China as Government Agents in commercial matters, and such officers are likewise to be treated on a footing of equality in their dealings with the local authorities, viz., the Taot'ai, the Prefect, and the Magistrates of the place. Any special difficulties arising may be submitted for consideration to the Superintendents of Northern and Southern Trade through the Korean high official residing at Tientsin. The expenses attending the maintenance of these Commercial Agents are to be borne by the respective Governments, and no private claims for a maintenance allowance are to be entertained. If any such officer should cause disagreement by persisting to act on his own authority, the Superintendent of Northern Trade will communicate with the King of Korea as to his speedy removal.

Article II.—In all actions brought by one Chinese subject against another while at a Korean port, the Chinese Commercial Government Agent is to perform the duties of a judge ; but apart from this, in all civil and criminal cases, if a Korean subject appears as plaintiff against a Chinese subject as defendant, the Chinese Commercial Government Agent is to arrest the accused and act as judge ; if a Chinese subject appears as plaintiff against a Korean subject as defendant, the Korean authorities will hand over the accused to the Chinese Commercial Government Agent for joint investigation and trial according to law. On the other hand, all such civil and criminal cases which may arise with Korean merchants at any of the open ports in China will be tried according to law by the Chinese local authorities irrespective of the nationality of either the plaintiff or the defendant ; at the same time, however, the Korean Government Agent is to be officially informed of the proceedings in the case, and he will be allowed, for the sake of fairness, to appeal to the high authorities for a revision of the verdict on behalf of the Korean subject concerned, should the latter not be satisfied with the decision given. Whenever a Korean subject sues a Chinese subject, either before the Chinese Commercial Agent in Korea or before the local authorities in China, the runners attached to the court are not allowed to claim from the litigant parties however so small a sum under the name of fees sanctioned by custom ; and if any breach of this rule becomes known, the officer under whose responsibility the offence is committed will be severely dealt with. If any subject of either of the two contracting countries, who, whether at home or in any of the treaty ports of the other country, has rendered himself guilty of a crime punishable by the laws of his own country, absconds into the territory of the other of the two countries, it will be the duty of the local authorities to take the necessary steps for the extradition of the criminal, through the nearest Commercial Agent, for punishment by his own authorities as soon as the Commercial Agent concerned informs them of the fact. Such criminals, while

being transported from place to place, may be deprived of their personal liberty but not maltreated.

Article V.—In consideration of the numerous difficulties arising from the authority exercised by local officials over the legal traffic at such places on the boundary as I-chou, Hui-ning, and Ch'ing-yuan, it has now been decided that the people on the frontier shall be free to go to and fro and trade as they please at Ts'e-men and I-chou on the two sides of the Ya-lu River, and at Hun-ch'un and Hui-ning on the two sides of the T'u-men River. In either country it will be only at the markets named above as open where Customs stations are to be established, with authority to deal with smugglers and outlaws and collect duties. The latter are to be levied at the rate of five per cent. *ad valorem* on all goods, without distinction of imports and exports, with the exception of red ginseng.

The charges formerly made on account of board and lodging, supply of provisions, reception, and escort are to be discontinued.

All offences committed among the frontier population in which money or property in general is concerned are still to be dealt with by the respective local authorities in accordance with the existing laws.

The details of the rules (applying to frontier traffic) will be submitted to the Throne for decision, after having been discussed and drawn up on the spot by special officers to be deputed for the purpose by the Superintendent of Northern Trade and the King of Korea.

(2) TWENTY-FOUR RULES FOR THE TRAFFIC ON THE FRONTIER
BETWEEN LIAOTUNG AND KOREA, 1883

Rule VI.—In all matters connected with the investigation of cases of robbery and the collection of duties arising from the traffic to these Customs stations, the officer in charge of Customs matters is to instruct the civil and military officers under his orders to act with special care and discretion. Offences in which money and other property are concerned are to be dealt with by the local authorities, who are to try each case in accordance with the existing laws. If, apart from this, Liaotung people misbehave themselves on the Korean side, or, being under prosecution at home, make their escape to Korean territory, the Governor of I-chou is to hand over the culprits to the Magistrate of An-tung for punishment. If a Korean subject misbehaves himself in Liaotung or escapes to Liaotung territory, the Magistrate of An-tung is to hand him over for punishment to the Governor of I-chou. In the event of cases occurring at the frontier which either the Magistrate of An-tung-hsien or the Governor of I-chou deems of such importance and gravity that he should not take the responsibility of settling them, the frontier Taot'ai's Yamen, on having previously received the necessary report from the An-tung Magistrate or from the Governor of I-chou, as the case may be, will lay the case before the Civil and Military Governors at Koukden, whose decision will be sent back through the same channel.

Rule VII.—The investigation of cases of robbery and the collection of duties by the Customs stations established at the places open for the traffic of goods on the frontier is a matter of the utmost importance. The Customs stations are therefore, in the first instance, made responsible for seeing that whenever merchants pass the station in either direction, proper examination be made of their papers, whereupon they are to be released without any attempt being made to extort illegal charges or to raise other vexatious difficulties. With regard to goods passing the stations, the revenue officers will be held responsible for the checking of the goods with those entered in the accompanying documents and for the due collection of the duties in accordance with the existing regulations, so that no irregular additional charges may be made.

Rule XXIV.—If any of the several cases of theft and fraud coming under investigation at the frontier and calling for strict preventive measures should be found to be left unprovided for in the above rules, the local authorities on either side will take such steps as may be deemed best at the time to settle the case ; but official information must be given and full details entered in the records, and the greatest care must be taken that the facilities granted to traffic on the frontier do not interfere with the general interests of society.

(3) TREATY OF SEOUL, 1899

(Replacing the earlier arrangements)

Article V.—1. A Chinese subject who commits any offence in Korea shall be tried and punished by the Chinese Consular authorities according to the laws of China.

A Korean subject who commits any offence in China shall be tried and punished by the Korean Consular officials according to the laws of Korea.

A Chinese subject who commits any offence against the life or property of a Korean in China shall be tried and punished by the Chinese authorities according to the laws of China.

A Korean subject who commits any offence against the life or property of a Chinese in Korea shall be tried and punished by the Korean authorities according to the laws of Korea.

When controversies arise between the subjects of the two countries, they shall be decided by the proper official of the nationality of the defendant according to the laws of that country.

The properly authorised official of the plaintiff's nationality shall be permitted to attend the trial and watch the proceedings, and shall be treated with the courtesy due to his position. If he so desires, he shall have the right to call and examine witnesses ; and if he is dissatisfied with the proceedings, he shall be permitted to protest against them in detail.

2. If a subject of one of the High Contracting Parties who has

committed an offence against the laws of his country takes refuge on the premises or on board a ship owned by a subject of the other, the local officials, after having notified the Consular authorities, shall send police to assist in having the offender arrested and brought to justice. The authorities of the nationality of the offender shall try the case. No protection or concealment of any such person shall be permitted.

3. If a subject of one of the High Contracting Parties who has committed an offence against the laws of his country takes refuge in the dominions of the other, the authorities of the latter country, on receiving an application, shall discover and hand over such person to his country for trial. No concealment or protection of any such person shall be permitted.

4. When in the subject (*sic*) of either of the High Contracting Parties the laws and legal procedure of the other shall have been so far modified and reformed as to remove the present existing objections, the right of extraterritorial jurisdictions shall be relinquished.

Article VII.—If the subjects of either of the High Contracting Parties in their commercial dealings with each other are guilty of fraud or make fictitious sales or do not pay their debts, the authorities of both Powers shall use stringent measures to arrest the offenders and obtain payment of the debts.

The Government of the High Contracting Powers shall not be responsible for debts of this nature.

APPENDIX XLIII

EXTRATERRITORIAL PROVISIONS OF THE TREATY OF TIENTSIN BETWEEN CHINA AND PERU, 1874

Article XI.—Any Peruvian vessels being from extraordinary causes compelled to seek a place of refuge shall be permitted to enter any Chinese port whatever without being subject to the payment of tonnage dues or duties on the goods, if only landed for the purpose of making the necessary repairs of the vessel, and remaining under the supervision of the Superintendent of the Customs.

Should any such vessel be wrecked or stranded, the Chinese authorities shall immediately adopt measures for rescuing the crew and for securing the vessel and cargo. The crew thus saved shall receive friendly treatment, and, if necessary, shall be furnished with the means of conveyance to the nearest Consular station.

If any Chinese vessels be wrecked or compelled by stress of weather to seek a place of refuge in the coast of Peru, the local maritime authorities shall render to them every assistance in their power; the goods and merchandise saved from the wreck shall not be subject to duties unless cleared for consumption; and the ships shall enjoy the

same liberties which in equal cases are granted in Peru to the ships of other nations.

Article XII.—Peruvian citizens in China having reason to complain of a Chinese shall proceed at once to their Consular Officer and state to him their grievance. The Consul will inquire into the case and do his utmost to arrange it amicably.

In like manner, if a Chinese have reason to complain of a Peruvian citizen in China, the Consular Officer shall listen to his complaint and endeavour to come to a friendly arrangement.

Should the Consular Officer not succeed in making such arrangement, then he shall request the assistance of the competent Chinese Officer, that they may together decide the matter according to the principles of equity.

Article XIII.—Chinese subjects guilty of a criminal action towards a Peruvian citizen in China shall be arrested and punished by the Chinese authorities according to Chinese laws.

Peruvian citizens in China who may commit any crime against a Chinese subject shall be arrested and punished according to the laws of Peru by the Peruvian Consular Officer.

Article XIV.—All questions in regard to rights, whether of property or person, arising between Peruvian citizens in China shall be subject to the jurisdiction of the Peruvian authorities. Disputes between citizens of Peru and those of other foreign nations shall be decided in China according to the Treaties existing between Peru and those foreign nations. In all cases, however, of Chinese subjects being concerned in the matter, the Chinese authorities may interfere in the proceeding according to Articles XII and XIII of this Treaty.

Article XV.—Chinese subjects in Peru shall have free and open access to the courts of justice of Peru for the prosecution and defence of their just rights; they shall enjoy in this respect the same rights and privileges as native citizens, and shall also be treated in every way like the citizens and subjects of other countries resident in Peru.

APPENDIX XLIV

EXTRATERRITORIAL PROVISIONS OF THE TREATY OF TIENTSIN BETWEEN CHINA AND BRAZIL, 1881

Article IX.—Les Brésiliens, en Chine, qui auront quelque sujet de plainte contre des Chinois, devront exposer leurs griefs au Consul brésilien, qui, après s'être rendu compte de l'affaire, s'efforcera de l'arranger à l'amiable.

De même, si des Chinois ont quelque sujet de plainte contre des Brésiliens en Chine, le Consul brésilien devra les écouter et s'efforcera d'arriver à un arrangement amiable.

Si le Consul ne peut les concilier, le différend devra être jugé, en toute équité, uniquement par l'autorité dont dépendra l'accusé, sans considérer si l'accusateur est brésilien ou chinois.

Article X.—Les sujets brésiliens, en Chine, qui commettront quelque crime contre des sujets chinois seront arrêtés par les autorités consulaires du Brésil et punis, conformément aux lois du Brésil, par les autorités que ces lois détermineront.

Les sujets chinois coupables d'un acte criminel envers des sujets brésiliens, en Chine, seront arrêtés et punis par les autorités chinoises, conformément aux lois chinoises.

En général, tout procès, civil ou criminel, entre sujets des deux États, en Chine, ne pourra être jugé que conformément aux lois et par les autorités de la nation du défendeur ou accusé.

Les Hautes Parties Contractantes ne seront pas tenues au remboursement des sommes volées ou dûes par un sujet de l'un des deux États à un sujet de l'autre. Dans les cas de vols, on procédera de conformité avec les lois du pays auquel appartiendra le coupable, et dans les cas de dettes, les autorités du pays du débiteur feront tout ce qui sera en leur pouvoir pour que le débiteur satisfasse à ses engagements.

Si des sujets chinois, en Chine, coupables personnellement ou complices de quelque crime, se réfugient dans les résidences, les magasins ou les navires de commerce des sujets brésiliens, les autorités chinoises en informeront officiellement le Consul, et enverront des agents chinois pour procéder à l'arrestation, de concert avec les agents brésiliens. On ne pourra ni les receler ni les protéger.

Article XI.—Toutes les contestations de droits, soit de personne, soit de propriété, qui pourront s'élever entre des sujets brésiliens en Chine, relèveront de la juridiction des autorités brésiennes. Les procès entre des sujets brésiliens et des étrangers, en Chine, relèveront uniquement des autorités de leurs pays.

Si quelque Chinois se trouve mêlé à ces procès, on devra agir conformément aux deux articles précédents.

Si, dans la suite, le Gouvernement chinois juge convenable d'établir, d'accord avec les Puissances étrangères, un Code unique pour régler la matière de juridiction des sujets étrangers en Chine, le Brésil devra aussi prendre part à cet accord.

Article XII.—Dans le cas où des gens, quelle que soit leur condition, du bord des navires de l'une des Hautes Parties Contractantes, dans un port ouvert de l'autre, descendant à terre, y causeraient du trouble, ils seraient punis conformément aux usages suivis, en pareil cas, dans chacun des deux pays.

Quant aux procès pour cause d'abordages entre des bâtiments des deux pays, dans les eaux de la Chine, ils seront jugés par les autorités du défendeur, conformément aux règlements en vigueur sur les abordages des navires dans tous les pays.

Si le demandeur ne se conforme pas à la sentence, les autorités dont il dépendra pourront s'adresser officiellement aux autorités dont

dépendra le défendeur pour qu'elles recommencent le procès et prononcent définitivement, en toute équité.

Article XIII.—Les sujets chinois, au Brésil, auront libre accès aux cours de justice du pays, pour la défense de leurs justes droits. Ils jouiront, sous ce rapport, des mêmes droits et privilèges que les Brésiliens et les sujets de la nation la plus favorisée.

APPENDIX XLV

EXTRATERRITORIAL PROVISIONS OF THE TREATY OF PEKING BETWEEN PORTUGAL AND CHINA, 1887

(An earlier Treaty of Peking, 1862, in which extraterritorial rights were granted to Portuguese subjects in China, was not ratified.)

Article XV.—The Chinese authorities are bound to grant the fullest protection to the persons and to the property of Portuguese subjects in China, whenever they may be exposed to insult or wrong. In case of robbery or incendiarism, the local authorities will immediately take the necessary measures to recover the stolen property, to terminate the disorder, to seize the guilty, and punish them according to the law. Similar protection will be given by Portuguese authorities to Chinese subjects in the possessions of Portugal.

Article XVI.—Whenever a Portuguese subject intends to build or open houses, shops or warehouses, churches, hospitals, or cemeteries, at the Treaty ports, or at other places, the purchase, rent, or lease of these properties shall be made out according to the current terms of the place, with equity, without exaction on either side, without offending against the usages of the people, and after due notice given by the proprietors to the local authority. It is understood, however, that the shops or warehouses above mentioned shall only be allowed at the ports open to trade, but not in any place in the interior.

Article XVII.—Portuguese subjects conveying merchandise between open ports shall be required to take certificates from the Superintendent of the Custom House, such as are specified in the regulations in force with reference to other nationalities.

But Portuguese subjects, who, without carrying merchandise, should like to go to the interior of China, must have passports issued by their Consuls and countersigned by the local authorities. The bearer of the passport must produce the same when demanded, and the passport not being irregular, he will be allowed to proceed and no opposition shall be offered, especially to his hiring persons or vessels for the carriage of his baggage or merchandise.

If he be without a passport, or if he commits any offence against the law, he shall be handed over to the nearest Consul of Portugal to

be punished, but he must not be subjected to any oppressive measure. No passport need be applied for by persons going on excursions from the ports open to trade to a distance not exceeding 100 *li* and for a period not exceeding five days.

The provisions of this Article do not apply to crews of ships, for the due restraint of whom regulations will be drawn up by the Consul and the local authorities.

Article XVIII.—In the event of a Portuguese merchant vessel being plundered by pirates or thieves within Chinese waters, the Chinese authorities are to employ their utmost exertions to seize and punish the said robbers and to recover the stolen goods, which, through the Consul, shall be restored to whom they belong.

Article XIX.—If a Portuguese vessel be shipwrecked on the coast of China, or be compelled to take refuge in any of the ports of the Empire, the Chinese authorities, on receiving notice of the fact, shall provide the necessary protection, affording prompt assistance and kind treatment to the crews and, if necessary, furnishing them with the means to reach the nearest consulate.

Article XLV.—As regards the delivery of Portuguese and Chinese criminals, with the exception of the Chinese criminals who take refuge in Macao, and for whose extradition the Governor of Macao will continue to follow the existing practice, after the receipt of a due requisition from the Viceroy of the Two Kwang, it is agreed, that, in the Chinese ports open to foreign trade, the Chinese criminals, who take refuge at the houses or on board the ships of Portuguese subjects, shall be arrested and delivered to the Chinese authorities on their applying to the Portuguese Consul; and likewise the Portuguese criminals, who take refuge in China, shall be arrested and delivered to the Portuguese authorities on their applying to the Chinese authorities; and by neither of the parties shall the criminals be harboured nor shall there be delay in delivering them.

Article XLVII.—All disputes arising between Portuguese subjects in China, with regard to rights, either of property or person, shall be submitted to the jurisdiction of the Portuguese authorities.

Article XLVIII.—Whenever Chinese subjects become guilty of any criminal act towards Portuguese subjects, the Portuguese authorities must report such acts to the Chinese authorities in order that the guilty be tried according to the laws of China.

If Portuguese subjects become guilty of any criminal act towards Chinese subjects, the Chinese authorities must report such acts to the Portuguese Consul in order that the guilty be tried according to the laws of Portugal.

Article XLIX.—If any Chinese subject shall have become indebted to a Portuguese subject and withholds payment, or fraudulently absconds from his creditor, the Chinese authorities shall use all their efforts to apprehend him and to compel him to pay, the debt being previously proved and the possibility of its payment ascertained.

The Portuguese authorities will likewise use their efforts to enforce

the payment of any debt due by any Portuguese subject to a Chinese subject. But in no case will the Portuguese Government or the Chinese Government be considered responsible for the debts of their subjects.

Article LI.—Portuguese subjects who may have any complaint or claim against any Chinese subject shall lay the same before the Consul, who will take due cognizance of the case and will use all his efforts to settle it amicably. Likewise, when a Chinese subject shall have occasion to complain of a Portuguese subject, the Consul will listen to his complaint and will do what he possibly can to re-establish harmony between the two parties.

If, however, the dispute be of such a nature that it cannot be settled in that conciliatory way, the Portuguese Consul and Chinese authorities will hold a joint investigation of the case, and decide it with equity, applying each the laws of his own country according to the nationality of the defendant.

APPENDIX XLVI

TREATY BETWEEN CHINA AND THE CONGO FREE STATE, 1898

(This treaty was unratified, but was held to convey extra-territoriality.)

L'État Indépendant du Congo et l'Empire de la Chine, en vue d'établir entre eux des relations, concluent un Traité de Commerce et d'Amitié. En conséquence, les Plénipotentiaires, dûment autorisés, sont convenus des dispositions spéciales ci-après qui entreront immédiatement en vigueur :

Article I.—Est rendu applicable à l'État Indépendant du Congo le traitement accordé par les Traités existant, en Chine, aux autres Puissances en ce qui concerne la personne, les biens et les droits de leurs ressortissants.

Article II.—Il est convenu qu'en retour les Chinois pourront librement se transporter, s'établir et résider dans toute l'étendue de l'État Indépendant du Congo, qu'ils y auront toute liberté d'acquérir, posséder et transmettre toute espèce de propriétés immobilières et mobilières, et qu'ils seront traités sur le même pied que les sujets de la nation la plus favorisée en tout ce qui concerne la navigation, le commerce et l'industrie.

En foi de quoi, les soussignés ont signé la présente Déclaration et y ont apposé leurs cachets.

Fait à Peking, le dix juillet mil huit cent nonante huit.

APPENDIX XLVII

EXTRATERRITORIAL PROVISIONS OF THE TREATY OF WASHINGTON,
BETWEEN MEXICO AND CHINA, 1899

Article XIII.—Mexicans in China who may have occasion of complaint against Chinese shall lay their complaint before the Mexican Consul, who shall investigate the facts of the case and exert himself to bring about an amicable settlement.

If a Chinese should likewise have any occasion of complaint against a Mexican in China, the Mexican Consul shall listen to his complaint and try to obtain a friendly settlement.

Should the Consul be unable to reconcile the parties, the case is then to be submitted, in all equity, whether the plaintiff be a Chinese or a Mexican, only to the court to which the accused is subject.

Article XIV.—Mexican citizens in China who may commit any crime against Chinese subjects shall be arrested by the Mexican Consular authorities and punished in accordance with the laws of Mexico.

Chinese subjects guilty of criminal acts against Mexican citizens in China shall be arrested and punished by the Chinese authorities in conformity with the laws of China.

As a general rule, every civil or criminal suit instituted in China between the subjects or citizens of the two Contracting Parties shall be tried only according to the laws and by the authorities of the country to which the defendant or accused belongs.

The High Contracting Parties shall not be bound to reimburse any money that has been stolen or obtained by fraud or owing by a subject or citizen of one of the two countries to a citizen or subject of the other country. In case of robbery or fraud, the proceedings to be instituted shall be in accordance with the laws of the country to which the accused belongs ; and in case of debt, the authorities of the country of the debtor shall do all they can to make the debtor comply with his obligation.

Should Chinese subjects in China who are principal actors or accomplices of a crime take refuge in the houses, warehouses, or on board the merchant vessels of Mexican citizens, the Chinese authorities shall lay the facts in this case before the Mexican Consular officers, and they shall conjointly appoint agents for the apprehension of the criminals, who shall not be protected nor hidden.

Article XV.—All legal questions that may arise in China between Mexican citizens concerning their persons or property shall be subject to the exclusive jurisdiction of the Mexican authorities. Suits instituted in China between Mexican citizens and foreigners shall be decided only by the authorities of their respective countries.

When Chinese shall be concerned in suits, the proceedings shall be in accordance with the provisions of the two preceding Articles.

Should the Chinese Government think proper hereafter to establish, in accord with foreign Powers, a code for the purpose of settling the matter of jurisdiction over foreign subjects in China, Mexico shall have an equal share in said agreement.

Article XVI.—Persons, of whatever condition they may be, who may land from vessels of one of the High Contracting Parties at an open port of the other, and cause any disturbance on shore, within twenty-four hours of their landing, shall be punished by the proper local authorities, but only with fine or imprisonment, in accordance with the usages established at said port.

The questions arising from collisions in Chinese waters between vessels of the two countries shall be decided by the authorities of the accused in accordance with the legal regulations in force in all countries respecting collisions.

Should the complainant not be satisfied with the decision, the agents of the country to which he belongs shall be authorised to apply officially to the authorities that have tried the offender, and they shall re-try the case and give a final and equitable decision on the same.

Article XVII.—Chinese subjects in Mexico shall have free access to the judicial tribunals of the country for the defence of their legitimate rights. They shall enjoy in this respect the same rights and concessions enjoyed by Mexicans or by the subjects of the most favoured nation.

APPENDIX XLVIII

EXTRATERRITORIAL PROVISIONS OF THE TREATY OF PEKING BETWEEN SWEDEN AND CHINA, 1908

(Concluded following the separation of Sweden and Norway)

Article X.—The duly authorised Swedish authorities shall hear and decide all cases brought against Swedish subjects by Swedish subjects, or by the subjects or citizens of any other foreign Power, without the intervention of the Chinese authorities.

However, as China is now engaged in reforming her judicial system, it is hereby agreed that as soon as all other Treaty Powers have agreed to relinquish their extraterritorial rights, Sweden will also be prepared to do so.

Charges or complaints of a civil nature brought by the subjects of either of the High Contracting Parties against the subjects of the other shall be heard and decided impartially by the authorities who have jurisdiction over the defendants, in accordance with the procedure observed in similar charges or complaints brought by subjects of the most favoured nation.

Subjects of either of the High Contracting Parties charged with the commission of any crimes or offences shall be tried by the authori-

ties who have jurisdiction over the accused, with the procedure observed in similar cases of the most favoured nation, and, if found guilty, shall be punished in accordance with the laws of their own country.

Article XI.—If Swedish subjects in China, who have committed offences, or have failed to discharge debts and fraudulently abscond in order to evade a summons or a warrant of arrest, should flee to the interior of China or take refuge in houses occupied by Chinese subjects or on board Chinese ships, the Chinese authorities shall, at the request of the Swedish Consul, deliver them to the Swedish authorities.

In like manner, if Chinese subjects in China, who have committed offences or have failed to discharge debts and fraudulently abscond, should take refuge in houses occupied by Swedish subjects in China or on board Swedish ships in Chinese waters, they shall be delivered up at the request of the Chinese authorities made to the Swedish authorities.

Such offenders shall in no case be shielded or withheld from arrest by either of the High Contracting Parties.

Article XII.—The Principles of the Christian religion, as professed by the Protestant and Roman Catholic Churches, are recognised as teaching men to do good and to do to others as they would have others to do to them. Those who quietly profess and teach these doctrines shall not be harassed or persecuted on account of their faith. Any person, whether Swedish subject or Chinese convert, who, according to these tenets, peaceably teaches and practises the principles of Christianity shall in no case be interfered with or molested therefor. No restrictions shall be placed on Chinese joining Christian Churches. Converts and non-converts, being Chinese subjects, shall alike conform to the laws of China, and, living together in peace and amity, shall pay due respect to those in authority. The fact of being a convert shall not protect a Chinese subject from the consequences of any offence he may have committed before or may commit after his admission into the Church, or exempt him from paying legal taxes levied on Chinese subjects generally, except taxes and contributions levied for the support of religious customs and practices contrary to their faith. Missionaries shall not interfere with the exercise by the native authorities of their jurisdiction over Chinese subjects; nor shall the native authorities make any distinction between converts and non-converts, but shall administer the laws without partiality, so that both classes may live together in peace.

Swedish missionary societies shall be permitted to rent and to lease in perpetuity, as the property of such societies, buildings or lands in all parts of the Empire for missionary purposes, and, after the title-deeds have been found in order and duly stamped by the local authorities, to erect such suitable buildings as may be required for carrying on their good work.

APPENDIX XLIX

DECLARATION ATTACHED TO THE SWISS TREATY WITH CHINA,
1918

The Plenipotentiaries of Switzerland and China have further agreed upon the following Declaration :

With regard to consular jurisdiction, *i.e.* extraterritorial rights, the Swiss Consuls shall enjoy the same rights as are or may be conceded to the consular agents of the most favoured Powers. When China shall have improved her judicial system, Switzerland shall be ready with the other treaty Powers to give up the right of consular jurisdiction in China.

APPENDIX L

EXTRACT FROM THE RUSSIAN *Bulletin des Lois* OF AUGUST 30—
SEPTEMBER 1, 1899REGULATIONS FOR THE ADMINISTRATION OF KWANG TUNG—
SECTION III. ORGANISATION OF THE JUDICIAL BRANCH

(Translation from the Russian.)

84. The operation of the Judicial Codes of the Emperor Alexander II extend in their entirety to the Kwang Tung region, and on the same bases on which these Codes, in accordance with the temporary Rules confirmed on the 13th of May, 1896, were introduced into the provinces and regions of Siberia, with the following modifications and additions :

85. The appointment of Justices of the Peace to vacancies will be effected after preliminary communication with the Governor of the region.

87. The jurisdiction of the Judicial institutions shall extend to all matters arising between Russians and foreigners, as also to cases in which Russians and foreigners are concerned on the one hand and natives on the other ; but in matters arising among the native population the jurisdiction of the above institutions shall extend only in the cases set forth in 92 and 95.

91. Disputes and claims in civil cases arising between natives of the region will come under the cognizance of the Native Tribunals and are decided by them according to existing custom.

92. From the general rule laid down in the preceding paragraph are excepted and dealt with by the Judicial institutions :

(a) Disputes and claims founded on deeds executed or attested with the participation of Russian authorities ;

- (b) Such civil cases of native origin in which both plaintiff and defendant mutually agree to refer their causes to the Russian Courts or to a Justice of the Peace.

96. The Governor is empowered (a) in exceptional cases, when serious crimes are committed in the region threatening public order and security among the population, to refer on each occasion by special order cases involving crimes punishable under the general criminal law to the examination of a Military Court, with application of the laws regarding judgments and punishments under martial law, and to confirm the sentences in such cases ; and (b) to place at the disposal of the nearest Chinese authorities persons of native origin for trial under Chinese laws.¹

APPENDIX LI

JURISDICTION IN THE CHINESE EASTERN RAILWAY ZONE

Several agreements with China deal with the question of jurisdiction in the Chinese Eastern Railway Zone. These need not be set down in full, but their scope will be indicated in the ensuing pages. In the "Contract for the Construction and Operation of the Chinese Eastern Railway," between the Russo-Chinese Bank and China, of September 8, 1896, it is provided :

" 5. The Chinese Government will take measures to assure the safety of the railway and of the persons in its service against any attack. The Company will have the right to employ at will as many foreigners or natives as it may find necessary for the purpose of administration etc. Criminal cases, lawsuits etc., upon the territory of the railway, must be settled by the local authorities in accordance with the stipulations of the treaties."

The statutes of the Chinese Eastern Railway Company (issued December 4/16, 1896²) repeat this provision, and declare that detailed rules will be drawn up for railway claims. An Imperial Russian Ukaz of August 2, 1901, notes that a number of Russians have been attracted to the railway zone and enjoy extraterritorial rights, and therefore establishes Justices of the Peace for the railway zone beneath the jurisdiction of the nearest Russian district courts. The competency of these officials extends to criminal cases where both parties are Russians, the procedure

¹ *Further Correspondence respecting Affairs of China*, 1899, p. 335.

² McMurray, *Treaties*, i. p. 85.

being that defined in Articles 88–90 of the Temporary Regulations for the Administration of the Kwantung Region.¹ The Russian judicial authorities have also power to hold preliminary examinations in criminal matters where the accused is unknown, but the injured party is a Russian. If in the course of the inquiry it appears that the accused is not a Russian, the matter must be referred to the proper quarter by the official of the Ministry for Foreign Affairs in Manchuria or by the Russian Consul in Newchang. The Governor-General of the Amur Region fulfils the same duties as regards the Justices of the Peace as the chief of the Kwantung Region does in accordance with Article 96 of the Kwantung Regulations. The frontier guards of the Trans-Amur Region have the duties of executing judgments and orders of the Justices of the Peace. In supplement to these arrangements, an Assistant Public Prosecutor is established in each of the District Courts of Vladivostok and Chita, and in the Appeal Court of Irkutsk. Justices of the Peace are appointed by the Russian Ministry of Justice, and are subject to its orders. The Chinese Eastern Railway may sue and be sued in civil cases respecting its property, while employees are civilly and criminally liable under Articles 1066–1123 of the Russian Judicial Regulations, and 1316–1330 of the Code of Civil Procedure for wrong-doing and losses due to their negligent conduct.²

By an agreement concluded between the Railway Company and the Provincial Government of Kirin on July 5/18, 1901, jurisdiction over Chinese subjects in the railway zone was regulated. A Principal Department of Foreign and Railway Affairs is established at Harbin, with a special staff of Chinese officials, for the final settlement of all cases arising in Kirin Province, if these affairs directly or indirectly touch the interests of the Chinese Eastern Railway Company, and also of Chinese subjects, both employees of the railway and others either permanently or temporarily in the railway zone. Cases not constituting serious violations of Chinese laws and railway regulations may be settled on the spot by the officials in conjunction with the district superintendent of the railway. More serious cases (*e.g.* murder, open and collective disobedience of the authorities, adultery, serious thefts, etc.) must be transferred for final decision to the Harbin Department. In doubtful cases the opinion of the Harbin

¹ See Appendix L.

² McMurray, *Treaties*, i. pp. 88–90.

Department is to be asked. Reports of all cases must be sent to the Harbin Department, which in turn notifies the engineer-in-chief of the railway. The Harbin Department settles cases remitted to it in conjunction with the engineer-in-chief. Decisions are arrived at by due process of law, and the Harbin Department decides where sentences shall be carried out. Cases involving the death penalty, or where the department and the engineer-in-chief do not agree, are sent to the Governor of the Province for settlement.¹

On January 1/14, 1902, a similar agreement was concluded between the Railway Company and the Provincial Government of Heilung-kiang. The arrangements established are practically identical with those of the Kirin Agreement, and also replace an earlier agreement of November 20/December 2, 1899.²

In conclusion, it may be noted that in the "Preliminary Agreement for the Kirin-Changchun Railway," between the Chinese Eastern Railway and China, of July 11, 1902, Article 9 stipulates :

"Any Chinese subjects living within the boundaries of the railway property who may be guilty of any offence, light or serious, must be tried by the nearest deputy of the Bureau of Railway Affairs. Any Chinese subjects arrested by the Russian police for violation of Regulations or offence against the law must be at once delivered to the Deputy of the General Bureau of Railway Affairs for custody and trial, and must not be detained (by the said police)." ³

On May 31, 1924, China concluded an agreement with Soviet Russia recognising the Soviet Government and agreeing to the control of the Chinese Eastern Railway by a board of directors, to be composed of five Chinese and five Russians. Russian extraterritorial rights in China were formally renounced however. One consequence of this was the case of Boris Ostroumoff in 1925, for which see Chapter IX, and the "Report of the Extraterritoriality Commission," p. 85.

¹ McMurray, *Treaties*, i. pp. 274-277. This agreement supplements and amends an earlier one of May 31, 1890. *Ibid.* pp. 277-278.

² *Ibid.* pp. 321-324.

³ *Ibid.* p. 630.

APPENDIX LII

OTHER BRITISH TREATIES GUARANTEEING EXTRATERRITORIAL
RIGHTS IN CHINA

(1) CHEFOO AGREEMENT, 1876

Section II (ii).—The British Treaty of 1858, Article XVI, lays down that “Chinese Subjects who may be guilty of any criminal act towards British Subjects shall be arrested and punished by Chinese Authorities according to the laws of China.

“British Subjects, who may commit any crime in China, shall be tried and punished by the Consul, or any other public functionary authorized thereto, according to the laws of Great Britain.

“Justice shall be equitably and impartially administered on both sides.”

The words “functionary authorized thereto” are translated in the Chinese text “British Government.”

In order to the fulfilment of its Treaty obligations, the British Government has established a Supreme Court at Shanghai, with a special code of rules, which it is now about to revise. The Chinese Government has established at Shanghai a Mixed Court, but the Officer presiding over it, either from lack of power, or dread of unpopularity, constantly fails to enforce his judgments.

It is now understood that the Tsung Li Yamen will write a Circular to the Legations, inviting Foreign Representatives at once to consider with the Tsung Li Yamen the measures needed for the more effective administration of justice at the Ports open to trade.

(2) SIKKIM-TIBET CONVENTION. TRADE REGULATIONS, 1893

Article VI.—In the event of trade disputes arising between British and Chinese or Tibetan subjects in Tibet, they shall be inquired into and settled in personal conference by the Political Officer for Sikkim and the Chinese frontier officer. The object of personal conference being to ascertain facts and do justice, where there is a divergence of views the law of the country to which the defendant belongs shall guide.

General Article I.—In the event of disagreement between the Political Officer for Sikkim and the Chinese frontier officer, each official shall report the matter to his immediate superior, who, in turn, if a settlement is not arrived at between them, shall refer such matter to their respective Governments for disposal.

(3) BURMA FRONTIER AND TRADE CONVENTION, 1894

Article XV.—Should criminals, subjects of either country, take refuge in the territory of the other, they shall, on due requisition

being made, be searched for, and, on reasonable presumption of their guilt being established, they shall be surrendered to the authorities demanding their extradition.

“Due requisition” shall be held to mean the demand of any functionary of either Government possessing a seal of office, and the demand may be addressed to the nearest frontier officer of the country in which the fugitive has taken refuge.

(4) COMMERCIAL TREATY, 1902

Article IV.—Whereas questions have arisen in the past concerning the right of Chinese subjects to invest money in non-Chinese enterprises and companies, and whereas it is a matter of common knowledge that large sums of Chinese capital are so invested, China hereby agrees to recognize the legality of all such investments past, present and future.

It being, moreover, of the utmost importance that all shareholders in a Joint Stock Company should stand on a footing of perfect equality as far as mutual obligations are concerned, China further agrees that Chinese subjects who have or may become shareholders in any British Joint Stock Company shall be held to have accepted, by the very act of becoming shareholders, the Charter of Incorporation or Memorandum and Articles of Association of such company and regulations framed thereunder as interpreted by British Courts, and that Chinese Courts shall enforce compliance therewith by such Chinese shareholders, if a suit to that effect be entered, provided always that their liability shall not be other or greater than that of British shareholders in the same company.

Similarly the British Government agrees that British subjects investing in Chinese companies shall be under the same obligations as the Chinese shareholders in such companies.

The foregoing shall not apply to cases which have already been before the Courts and been dismissed.

Article VII.—Inasmuch as the British Government afford protection to Chinese trade marks against infringement, imitation, or colourable imitation by British subjects, the Chinese Government undertake to afford protection to British trade marks against infringement, imitation, or colourable imitation by Chinese subjects.

The Chinese Government further undertake that the Superintendents of Northern and of Southern Trade shall establish offices within their respective jurisdictions under control of the Imperial Maritime Customs where foreign trade marks may be registered on payment of a reasonable fee.

Article XII.—China having expressed a strong desire to reform her judicial system and to bring it into accord with that of Western nations, Great Britain agrees to give every assistance to such reform, and she will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the

arrangement for their administration, and other considerations warrant her in so doing.

(5) TIBET TRADE REGULATIONS, 1908

Article IV.—In the event of disputes arising at the marts between British subjects and persons of Chinese and Tibetan nationalities, they shall be inquired into and settled in personal conference between the British Trade Agent at the nearest mart and the Chinese and Tibetan Authorities of the Judicial Court at the mart, the object of personal conference being to ascertain facts and to do justice. Where there is a divergence of view, the law of the country to which the defendant belongs shall guide. In any of such mixed cases, the Officer or Officers of the defendant's nationality shall preside at the trial; the Officer or Officers of the plaintiff's country merely attending to watch the course of the trial.

All questions in regard to rights, whether of property or person, arising between British subjects shall be subject to the jurisdiction of the British Authorities.

British subjects who may commit any crime at the marts or on the routes to the marts shall be handed over by the local authorities to the British Trade Agent at the mart nearest to the scene of offence, to be tried and punished according to the laws of India, but such British subjects shall not be subjected by the local authorities to any ill-usage in excess of necessary restraint.

Chinese and Tibetan subjects who may be guilty of any criminal act towards British subjects at the mart or on the routes thereto shall be arrested and punished by the Chinese and Tibetan Authorities according to law.

Justice shall be equitably and impartially administered on both sides.

Should it happen that Chinese or Tibetan subjects bring a criminal complaint against a British subject before the British Trade Agent, the Chinese or Tibetan Authorities shall have the right to send a representative, or representatives, to watch the course of trial in the British Trade Agent's Court. Similarly, in cases in which a British subject has reason to complain of a Chinese or Tibetan subject in the Judicial Court at the mart, the British Trade Agent shall have the right to send a representative to the Judicial Court to watch the course of trial.

Article V.—The Tibetan Authorities, in obedience to the instructions of the Peking Government, having a strong desire to reform the judicial system of Tibet and to bring it into accord with that of Western nations, Great Britain agrees to relinquish her rights of extraterritoriality in Tibet, whenever such rights are relinquished in China, and when she is satisfied that the state of the Tibetan laws and the arrangements for their administration and other considerations warrant her in so doing.

Article IX.—British officers and subjects, as well as goods, proceeding to the trade marts must adhere to the trade routes from the

frontier of India. They shall not, without permission, proceed beyond the marts, or to the Gartok from Yatung and Gyantse, or from Gartok to Yatung and Gyantse, by any route through the interior of Tibet, but natives of the Indian frontier, who have already by usage traded and resided in Tibet elsewhere than at the marts shall be at liberty to continue their trade, in accordance with the existing practice, but when so trading or residing they shall remain, as heretofore, amenable to the local jurisdiction.

Article X.—In cases where officials or traders en route to and from India or Tibet are robbed of treasure or merchandise, public or private, they shall forthwith report to the Police Officers, who shall take immediate measures to arrest the robbers and hand them to the Local Authorities. The Local Authorities shall bring them to instant trial, and shall also recover and restore the stolen property. But if the robbers flee to places out of the jurisdiction and influence of Tibet and cannot be arrested, the Police and the Local Authorities shall not be held responsible for such losses.

APPENDIX LIII

OTHER AMERICAN TREATIES, ETC., GUARANTEEING EXTRATERRITORIAL RIGHTS IN CHINA

(1) SUPPLEMENTAL TREATY OF PEKING, 1880

Article IV.—When controversies arise in the Chinese Empire between citizens of the United States and subjects of His Imperial Majesty which need to be examined and decided by the public officers of the two nations, it is agreed between the Governments of the United States and China that such cases shall be tried by the proper official of the nationality of the defendant. The properly authorised official of the plaintiff's nationality shall be freely permitted to attend the trial, and shall be treated with the courtesy due to his position. He shall be granted all proper facilities for watching the proceedings in the interests of justice. If he so desires, he shall be permitted to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case.

(2) COMMERCIAL TREATY, 1903

Whereas the United States undertakes to protect the citizens of any country in the exclusive use within the United States of any lawful trade marks, provided that such country agrees by Treaty or convention to give like protection to citizens of the United States :

Therefore the Government of China, in order to secure such protection in the United States for its subjects, now agrees to fully protect any citizen, firm or corporation of the United States in the

exclusive use in the Empire of China of any lawful trade mark to the exclusive use of which in the United States they are entitled, or which they have adopted and used, or intend to adopt and use as soon as registered, for exclusive use within the Empire of China. To this end the Chinese Government agrees to issue by its proper authorities proclamations, having the force of law, forbidding all subjects of China from infringing on, imitating, colorably imitating, or knowingly passing off an imitation of trade marks belonging to citizens of the United States, which shall have been registered by the proper authorities of the United States at such offices as the Chinese Government will establish for such purpose, on payment of a reasonable fee, after due investigation by the Chinese authorities, and in compliance with reasonable regulations.

Article X.—The United States Government allows subjects of China to patent their inventions in the United States and protects them in the use and ownership of such patents. The Government of China now agrees that it will establish a Patent Office. After this office has been established and special laws with regard to inventions have been adopted, it will thereupon, after the payment of the prescribed fees, issue certificates of protection, valid for a fixed term of years, to citizens of the United States on all their patents issued by the United States, in respect of articles the sale of which is lawful in China, which do not infringe on previous inventions of Chinese subjects, in the same manner as patents are to be issued to subjects of China.

Article XI.—Whereas the Government of the United States undertakes to give the benefits of its copyright laws to the citizens of any foreign State which gives to the citizens of the United States the benefits of copyright on an equal basis with its own citizens :

Therefore the Government of China, in order to secure such benefits in the United States for its subjects, now agrees to give full protection, in the same way and manner and subject to the same conditions upon which it agrees to protect trade-marks to all citizens of the United States who are authors, designers or proprietors of any book, map, print or engraving especially prepared for the use and education of the Chinese people, or translation into Chinese of any book, in the exclusive right to print and sell such book, map, print, engraving or translation in the Empire of China during ten years from the date of registration. With the exception of the book, map, etc., specified above, which may not be reprinted in the same form, no work shall be entitled to copyright privileges under this Article. It is understood that Chinese subjects shall be at liberty to make, print and sell original translations into Chinese of any works written or of maps compiled by a citizen of the United States. This Article shall not be held to protect against due process of law any citizen of the United States or Chinese subject who may be author, proprietor or seller of any publication calculated to injure the well-being of China.

Article XV.—The Government of China having expressed a strong desire to reform its judicial system and to bring it into accord with that

of Western nations, the United States agrees to give every assistance to such reform and will also be prepared to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant it in so doing.

(3) PROTOCOL OF PROCEDURE IN MIXED CASES IN CHINESE COURTS
IN TIENTSIN DISTRICT, OCTOBER 24, 1917

“ Court : Such cases are to be tried, not in the Shen P’an Ting, but in a court held by the local territorial officials (Ti Fang Kwan).

“ Assessor : Notice of the time and place of the hearing, when set, shall be sent to the American Consul-General well in advance, so that, in accordance with the treaty, he may, if he wishes, send an Assessor to sit in the case.

“ Introduction of Witnesses : The Assessor shall have the right to introduce such witnesses as he wishes, but the summons for witnesses of Chinese nationality shall be issued by the Judge of the Court hearing the case. It is understood that, when the Assessor indicates to the Judge his desire to introduce a certain witness, the Judge has no option but to summon that witness.

“ Examination of Witnesses : The Assessor shall have the right, in accordance with the treaty, to question the witnesses produced in the Court, but it is understood that in putting his question to witnesses the procedure will be for the Assessor to inform the Judge at the time in the Court that he wishes a certain question put to the witness and that the Judge shall then and there, forthwith, put that exact question, in the words and phrasing of the Assessor to the witness. It is understood that the Judge has no option but to put the questions of the Assessor and to do so in the Assessor’s exact words.

“ Cross Examination of Witnesses : The procedure in the cross examination of witnesses shall be the same as in direct examination, it being understood, in accordance with the treaty, that the Assessor has the right to cross examine any witness.

“ Recognition of Assessor : The Assessor shall be given due and proper recognition, treated with the courtesy due to his Government and his position, and seated at the table with the Judge, not at a side table.

“ Signed at Tientsin, China, this 24th day of October, 1917.

(Signed and sealed) “ HUANG YUNG-LIANG,

“ Special Commissioner of Foreign Affairs for
Chihli Province.

(Signed) “ P. R. JOSSELYN,

(Sealed.)

“ Vice-Consul of the United States of America, in
Charge of the American Consulate General at
Tientsin, China.”

APPENDIX LIV

OTHER TREATIES GUARANTEEING FRENCH EXTRATERRITORIAL
RIGHTS IN CHINA

CONVENTION OF TIENTSIN, 1886

Article XVI.—Les Chinois résidant en Annam seront, sous le rapport de la juridiction criminelle, fiscale ou autre, placés dans les mêmes conditions que les sujets de la nation la plus favorisée. Les procès, qui s'élèveront en Chine, dans les marchés ouverts de la frontière, entre les sujets chinois et les Français ou Annamites seront réglés en cour mixte par des fonctionnaires chinois et français.

Pour les crimes ou délits que les Français ou protégés français commettraient en Chine dans les localités ouvertes au commerce, il sera procédé, conformément aux stipulations des Articles 38 et 39 du Traité du 27 juin 1858.

Article XVII.—Si dans les localités ouvertes au commerce à la frontière de Chine, les Chinois déserteurs ou prévenus de quelques crimes qualifiés tels par la loi chinoise, se réfugient dans des maisons ou à bord des barques appartenant à des Français ou protégés français, l'autorité locale s'adressera au Consul, qui, sur la preuve de la culpabilité des prévenus, prendra immédiatement les mesures nécessaires pour qu'ils soient remis et livrés à l'action régulière des lois.

Les Chinois coupables ou inculpés de crimes ou de délits, qui chercheraient un refuge en Annam, seront, à la requête des autorités chinoises, et sur la preuve de leur culpabilité, recherchés, arrêtés et extradés dans tous les cas où pourraient être extradés de France les sujets des pays jouissant du traitement le plus large en matière d'extradition.

Les Français coupables ou inculpés de crimes ou de délits, qui chercheraient un refuge en Chine, seront, à la requête des autorités françaises et sur la preuve de leur culpabilité, arrêtés et remis aux dites autorités pour être livrés à l'action régulière des lois.

De part et d'autre, on évitera avec soin tout recelé et toute connivence.

APPENDIX LV

BRITISH GAOLS AT TIENTSIN AND CHEFOO, 1868-69

Six British subjects, of European or Colonial origin, were confined for a period of 144 days, and four British subjects of Asiatic origin for a period of 94 days, making in all ten British subjects confined for 238 days, as per following Table :

1868

| | Number of British Prisoners. | Prisoners' Origin. | Terms of Individual Confinement. | Total Number of Days. |
|--------------------|------------------------------------|--------------------------|--|--------------------------|
| | | | Days. | Days. |
| | 3 | British or Colonial . | 27 | 81 |
| | 2 | Ditto . | 15 | 30 |
| | 1 | Ditto . | 33 | 33 |
| | 2 | Asiatic . | 43 | 86 |
| | 2 | Ditto . | 4 | 8 |
| Total of prisoners | 10 | — | — | — |
| Total of days . | — | — | — | 238 |

The two prisoners of Asiatic origin, who received each four days' imprisonment, were Malays, and presumably British subjects ; the two other Asiatics were Mahomedan inhabitants of British India.

There is at present no regular gaol at Tien-tsin, only three temporary cells, two of which cannot be used in Winter ; and, therefore, I have sometimes to punish offenders by the infliction of fines, whom it would be far better to punish by imprisonment and hard labour, especially where assaults are committed on Chinese by British subjects, in which case it is highly desirable that the complainant should have ocular demonstration that the guilty parties have been actually punished. Neither is there any proper gaol accommodation at Taku at present ; and, in consequence of this, the Acting Vice-Consul was obliged, only three days ago, to send to the Consular gaol at Shanghae a seaman whom he had sentenced to ten weeks' imprisonment. In April last, I was also obliged to send a prisoner to Shanghae, as, from the gaol arrangements here, his punishment could not have been adequately carried out.

I hope that Major Crossman may be able to remedy this great defect next year by the erection of a proper gaol at Tien-tsin. Any Taku prisoners who might be sentenced to lengthened terms of imprisonment could then be confined here, and the public would thus be saved the expense of their transport to Shanghae.

INCLOSURE 2 IN No. 7

Consul Morgan to Sir R. Alcock

Returns of Writer, Office Servants, Prisoners, and Expenditure for Medical Attendance at Her Britannic Majesty's Consulate, Tien-tsin.

Despatch from Sir Rutherford Alcock respecting a Supplementary Convention to the Treaty of Tien-tsin signed by him on October 23, 1869.¹

¹ *Revision of the Treaty of Tientsin*, pp. 40-41.

INCLOSURE 2 IN No. 14

Return of Number of Prisoners confined in Her Majesty's Gaol at Che-foo, distinguishing their Different Nationalities, from July 14, 1868, to July 15, 1869.

| Nationalities. | Number of Men. | Total Number of Days. | Average Number of Days per Man. |
|------------------|----------------|-----------------------|---------------------------------|
| English | 32 | 496 | 11 days for each man |
| American | 2 | | |
| German | 3 | | |
| Chinese | 7 | | |
| Italian | 1 | | |
| | 45 | | |

(NOTE.—No regular “ Prisoners’ Return Book ” appears to have been kept in Her Majesty’s gaol till July 14, 1868, and only an approximation of the number of days prisoners were in gaol anterior to that period could have been made from the Consular accounts and record of criminal cases.)

Besides those men who were imprisoned by the Consul, the gaol has to receive prisoners from the men-of-war stationed at this port.

(Signed) JOHN MARKHAM,
Consul.

British Consulate,
Che-foo, July 20, 1869.

Despatch from Sir Rutherford Alcock respecting a Supplementary Convention to the Treaty of Tien-tsin signed by him on October 23, 1869.¹

APPENDIX LVI

ABSENCE OF A COMMERCIAL CODE IN CHINA

China Association to Foreign Office (received March 18)

159, Cannon Street, London,
March 17, 1899.

SIR,—The Committee desire to submit, for the consideration of Her Majesty’s Government, a Memorandum showing the grave inconveniences that have arisen, and that are likely to arise hereafter to a much greater extent, in China, from the want of a code of commercial law and of Courts competent to duly administer it.

¹ *Revision of the Treaty of Tientsin*, p. 100.

The chaotic condition of Chinese civil law, and the unreliable character of the Courts, made themselves felt directly the Treaty of Tien-tsin had established more intimate relations between foreigners and Chinese.

Inquiry and research have failed, indeed, to discover the existence of any code which governs or controls the decisions of Chinese Tribunals in civil cases. Commercial disputes are submitted, commonly, for the arbitration of Guilds ; and Chinese Magistrates are believed to evolve out of their inner consciousness principles applicable to cases that are brought before them for decision.

It says much for the prevalent good-feeling and good-faith, on both sides, that commercial relations have gone on with so much smoothness under such conditions, for so many years. Those relations are tending, however, to become much more complex ; and a recent case, in which the Taotai of Shanghai refused to enforce a call against recalcitrant shareholders in the Bank of China, on the ground that Chinese law makes no provision for such claims, is a strong example of the powerlessness or unwillingness of a Chinese Court to give just redress to a foreign suitor.

Everything points to approaching industrial development in China, on an important scale. Foreign and Chinese capital is certain to be more and more associated. Numerous questions of great commercial importance are almost certain to arise, between foreigners and Chinese, which will demand settlement by a competent Court ; yet there exists in China neither law to regulate, nor Tribunal which can be relied upon to adjudicate fairly in cases of difficulty of dispute. Charges of incapacity are, in fact, frequently launched from the throne ; though under the guise, commonly, of denunciations, of clerks and underlings for rapacity and extortion.

These conditions appear pregnant with possibilities of confusion, and the Association ventures to suggest that the Chinese Government should be urged not only to give immediate effect to the promises which it has made to set about the introduction of an international code, but also to take steps to bring about the establishment of International or Mixed Courts competent to administer it.

A comparison is suggested with the situation in Egypt before the institution of the International or Mixed Tribunals. " Previous to the establishment of these Tribunals " (writes Sir Alfred Milner) " all suits against foreigners had to be brought before their respective Consular Courts ; . . . but when the foreigner himself had an action to bring, he entirely declined to go before the Native Courts ; alleging that no justice could be had in that quarter, he would appeal to the Consul-General of his country to get his claim settled by diplomatic action."

The consequences were as inconvenient, often, to the Egyptian Government, as the initial procedure had proved to the foreign plaintiff ; and the time is almost certainly at hand when similar difficulties will be felt in China unless due provision be made against them.

The situation, happily, has not yet reached the point of development it had reached in Egypt when the remedy was applied. But it is analogous in many respects, and the analogy encourages the suggestion that a similar remedy might be found.

“The Egyptian Government,” we are told, “was encouraged to propose, and, after eight years of weary negotiations, to carry, with the consent of all the Powers, a law creating a single strong international jurisdiction to supersede, for the great majority of civil cases, the existing Consular Courts. The new Tribunals were made exclusively competent to try all suits in which the plaintiff and defendant were of different nationalities—that is to say, all suits between natives and foreigners, as well as between foreigners not belonging to the same country; and they were authorised to deal with actions concerning real estate, even between persons of the same nationality. . . . The composition of the Tribunals was partly native and partly foreign, but the foreigners were everywhere in a majority—in the proportion of four to three in the Courts of First Instance, and of four to seven in the Court of Appeal. Among the foreign Judges, the United States and all the European Powers, except Spain and Portugal (which, however, subsequently contributed members to the Courts), were represented. The Honorary Presidency of each Court was reserved for an Egyptian subject, but the Vice-President, who was the real Acting Chief, was in every case a foreigner.”

The Mixed Tribunals have now been working for upward of twenty years.

“Opinions differ greatly about their merits; but no impartial judge will question that, on the balance of advantages and disadvantages, they have been of enormous benefit to Egypt. Their members have not always been well chosen; their code and procedure are not, in all respects, particularly suitable to the condition of the country; their Judgments have, in many instances, suffered from personal and political bias; but not only has their jurisdiction been an immense improvement on the state of things which preceded it, but they have set in Egypt a new standard of Equity, and have familiarised the public mind with the spectacle, previously unknown, of judicial method, impartiality, and incorruptibility.”

The benefits which enured in Egypt might be anticipated with equal certainty in China. It cannot be disguised, on the other hand, that similar inconveniences might probably be felt. While improving the administration of justice, the Tribunals tended certainly, in Egypt, to complicate the political situation.

“They were,” to again quote Sir Alfred Milner, “a new stronghold of foreign influence, a new surrender of the sovereign rights of the native Government. They might, nominally, be the Courts of the Khedive, . . . but they were, in reality, foreign Courts, deriving their authority from outside. . . . Add to this that they naturally enjoy an amount of influence and respect which could not attach to the numerous petty Tribunals for which they were substituted. Judicially far better, they

are at the same time politically more formidable than the authorities whom they have supplanted."

If it appear rash to suggest the introduction of a new complication into the already sufficiently complex situation at Peking, it is evident also that "the sovereign rights of the native Government" have been already so shaken that its only chance of salvation lies in the adoption of such administrative and economic reforms as may enable it to recover cohesion and prestige.

The conditions differ from those prevailing in Egypt twenty years ago in an essential feature. The Government of the Khedive was led to take the initiative. Experience forbids us to expect that the Government of Peking will follow that example. It is to the credit of the Reform Party, which was suppressed by the recent *coup d'État*, that it placed administrative and judicial reform in the forefront of its programme; and the Association cannot but regret the subversion of a regime which gave the best hope that has yet been perceptible in China for the future. Still, it may be doubted whether the Imperial authority would have been capable, even in favourable circumstances, of effecting such a change as that now proposed without external support. Its accomplishment spontaneously is, at any rate, hopeless as matters stand. The necessity will have to be strongly urged. The initiative must come from without.

The Association is fully conscious that the proposal is one which requires the co-operation of the Powers chiefly concerned. The preponderant interests of Great Britain would seem to make it fitting, however, that she should take the lead in proposing such concerted action as may attain the object in view.

The situation has become—it would be scarcely an exaggeration to say that it is daily becoming—financially and politically, more strained since the Empress Dowager's usurpation of power. It is with a consciousness, therefore, of urgency that the Association ventures to advocate the inauguration of reforms which cannot, in its opinion, be delayed without very grave danger to the integrity of the Empire and to the interests of the Treaty Powers.

I have etc.

(Signed) R. S. GUNDRY,
Hon. Secretary China Association.

MEMORANDUM ON THE NEED OF A CODE OF CHINESE MERCANTILE LAW

By promulgating a Code of Railway and Mining Regulations, the Tsung-li Yamen has recognised the probability of industrial enterprise in China being undertaken on a scale that will necessitate the employment of associated capital. The Regulations are crude, and contain provisions against which the foreign Ministers have protested as impracticable; but that is of secondary importance, as details can be amended. The important question is whether any efficient Regulations can be framed without preceding reforms in Chinese law.

The desirability of making railways and opening mines was formally admitted by the Empress Regent in 1887, and Chinese capitalists were invited to take shares in the proposed line from Taku to Tien-tsin. The invitation was renewed in a recent Edict sanctioning the Lu-Han line ; but Chinese merchants refused to be tempted, as they had refused, often, before. They refuse to believe that their officials will abstain from interference, and they will have nothing to do with enterprise in which the officials have a hand. The one thing that would give them confidence is foreign control ; but Article 13 of the present Regulations expressly stipulates that—

“ In order to protect the sovereign rights of China, the control of all Railway and Mining Companies, irrespective of the foreign capital concerned, must remain in the hand of the Chinese merchants,” though the accounts shall be open to the inspection of foreign shareholders.

The object is intelligible ; but it must be obtained by other means ; for it is more than doubtful whether Chinese or foreign capital would be forthcoming, or any Companies formed at all under such conditions.

The difficulty of adjusting disputes that might arise between foreigners and Chinese became evident at a very early stage of intercourse. Article XVII of the Treaty of Tien-tsin provided that—

“ A British subject having reason to complain of a Chinese must proceed to the Consulate and state his grievance. The Consul will inquire into the merits of the case and do his utmost to arrange it amicably. . . . If disputes take place of such a nature that the Consul cannot arrange them amicably, then he shall request the assistance of the Chinese authorities that they may together examine into the merits of the case and decide it equitably.”

The idea seems to have been to constitute a Joint Tribunal, basing its decisions upon broad principles of justice ; but complaint was made by the Shanghai Chamber of Commerce, so early as 1867, that the actual upshot had been “ a Court which, being guided by so-called Chinese law, leaves the decision entirely with the Chinese Magistrate, affording no scope for the exercise on the part of the foreign Assessor of the authoritative action by which alone we can hope to obtain justice.”

“ A manifest injustice is (it was urged) done to a foreigner if, whenever he brings a suit against a native of China, he is dependent only on the doubtfulness and corruption of the native mode of arranging such matters. The Chinese have no known code of civil law, and it is impossible for a foreign merchant to become acquainted with the security afforded by the Chinese Courts for the fulfilment of native contracts. . . . Attempts have been made to discover some of the general principles of Chinese Commercial Law ; but they have resulted in complete failure, it having become, at each new stage of the investigation, more evident that nothing which can be dignified by the name of a civil code exists in China ; disputes being for the most part settled by reference to the Guilds or by other arbitration. . . .”

The remedy suggested by the Shanghai Chamber was a more precise definition and gradation of the powers of Mixed Courts, the idea being that their decisions "would speedily form themselves into a code of law applicable to the settlement of all disputes likely to arise in the conduct of mercantile transactions."

Sir Rutherford Alcock went further and urged on the Tsung-li Yamen the necessity for "adopting some common basis of adjudication"—in other words, a code of mercantile law which could be accepted by Chinese and foreign Judges alike as founded "on broad and universal principles of equity." The Chinese "expressed satisfaction at the suggestion, agreeing that the establishment of such a code would supply a great want."

Sir Rutherford Alcock reported accordingly that "the adoption of a commercial code and fixed procedure in harmony with European principles of legislation" appeared to be in sight, adding that this would be an important step towards the adoption of an international code—when "one, if not the greatest, objection to the residence of foreigners in the interior would have been removed"; and the Board of Trade wound up the correspondence with an expression of confidence that "a written code of law to which both nations can appeal as a guide in disputes will remove a fruitful source of misunderstanding and difficulty, while this and Mixed Courts of Justice in civil actions cannot fail to be productive of unqualified good in placing our commercial relations on a sounder footing and raising the standard of commercial morality." It was even believed that the Chinese were about deputing a competent officer to confer on the subject with Sir Edmund Hornby, then Chief Judge of Her Majesty's Supreme Court at Shanghai; and "my Lords suggested that Sir R. Alcock should be instructed to call upon that gentleman to submit a statement of his view as to the best method of giving effect to the proposed arrangements."

Nothing of the kind having, characteristically, been done, Sir Thomas Wade revived the question eight years later (in 1876) in the Chefoo Convention, in the following terms:—

"In order to the fulfilment of its Treaty obligations, the British Government has established a Supreme Court at Shanghai with a special code of rules. The Chinese Government has established at Shanghai a Mixed Court, but the officer presiding over it, either from lack of power or dread of unpopularity, constantly fails to enforce its Judgments. It is now understood that the Tsung-li Yamen will write a circular to the Legations inviting foreign representatives at once to consider with the Tsung-li Yamen the measures needed for the more effective administration of justice at the ports open to trade."

Is it necessary to add that the Yamen has neither issued any such invitation nor taken any steps in the direction indicated, to the present day?

The status of the Mixed Court has, on the other hand, been confirmed on the very basis which the Shanghai Chamber deplored. Clause 3 of Section 2 of the same Convention declares:

“ It is further understood that, so long as the laws of the two countries differ from each other, there can be but one principle to guide judicial proceedings in mixed cases in China, namely, that the case is tried by the official of the defendant's nationality, the official of the plaintiff's nationality merely attending to watch the proceedings in the interests of justice. If the officer so attending be dissatisfied with the proceedings, it will be in his power to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case.”

The fact seems to be that the Chinese had laid hold of the Chamber's proposition and contended that it was applicable to both sides. Not Chinese defendants only but all alike, Chinese *v.* English, as well as English *v.* Chinese, were triable before the Joint Tribunal contemplated by the Treaty of Tien-tsin, and Sir Thomas Wade preferred evidently the Scylla indicated by the Chamber to the Charybdis indicated by the Chinese.

The arrangement would present itself, moreover, as temporary, in view of the promise contained in the previous clause, as “ the measures needed for the more effective administration of justice ” implied the promulgation of a code which should be “ accepted by Chinese and foreign Judges alike.” It is possible that, if Sir Thomas had returned to Peking, the Chinese might have been persuaded to give this promise effect. As things have happened, it remains a dead letter, and the administration of justice stands exactly where it did thirty years ago.

Yet the need of reforms such as were then indicated has been felt increasingly year by year. Every year our commercial relations with China become more important, and the interests of British and Chinese capitalists more involved. The industrial Companies that have been founded recently at Shanghai under foreign management contain numerous Chinese shareholders. Chinese are also shareholders in the local Fire and Marine Insurance Companies, and in most of the local banks. The uncalled capital of such Associations constitutes a reserve adding materially to the estimation in which they are held. Yet the Taotai of Shanghai ruled lately that Chinese law cannot be invoked to enforce payment of calls.

“ Commerce,” he declared, “ between China and foreign countries is conducted strictly on lines laid down by Treaty. Now in the Treaties it is stated that subjects of the Contracting Parties may employ persons in any lawful capacity, or may mutually engage in trade ; but I cannot find any clause permitting them to take shares in companies. That is, no doubt, because, the laws of the various Treaty Powers not being identical, each nationality must adhere to its own. If Chinese merchants go into partnership with foreigners for purposes of trade, and disputes occur, they cannot be settled according to Chinese law, nor can they be settled according to Western law, nor do the provisions of the Treaties apply. If Chinese and foreign merchants are mixed up in business transactions, endless opportunities

will be afforded for unscrupulous dealings and nefarious practices of all kinds."

The case at issue was one in which the Bank of China sought to recover certain calls due on shares held by Chinese. Sir Claude MacDonald has persuaded the Tsung-li Yamen to send it back to the Viceroy to be tried afresh, and it may be hoped that a decision which cuts at the root of industrial co-operation between foreigners and Chinese will be reversed; but the unsatisfactory conditions under which it was possible will remain so long as the Chinese evade fulfilment of the promises made in 1868 and 1876.

The language of the Treaties is necessarily general. It did not come within the scope of one so comprehensive even as the Treaty of Tien-tsin to enumerate the various classes of contracts that might or might not be entered into between foreigners and Chinese. It is notorious, at any rate, that Chinese, both merchants and officials, have for years been shareholders in foreign Companies, and have enjoyed all the advantages which such a position gave. It is the merest trifling, therefore, to raise such a quibble as that invented by the Taotai at the present day. But the very frivolity of his propositions may serve to show the necessity for reforming a judicial system out of which they can be evolved.

The new Mining and Railway Regulations, imperfect in part and objectionable though they be, constitute an admission that the old order of things has changed, and afford an opportunity to press for fulfilment of pledges taken when the need was less urgent than now. Judicial reform was a prominent feature in the programme urged upon the Tsung-li Yamen by Kang Yu-wei. That programme failed to commend itself to a body less adversely constituted than the present; but it is submitted that no greater service could be rendered to the Chinese nation than to substitute, for the present chaotic condition of China civil law, a mercantile code based upon broad principles of justice and suitable to the requirements of modern times.

(Signed) R. S. GUNDRY,
Hon. Secretary China Association.

159, Cannon Street, London,
March 14, 1899.

CHINA ASSOCIATION TO SIR C. MACDONALD

China Association, Shanghai Branch,
Nov. 3, 1898.

YOUR EXCELLENCY,—The Committee of this branch of the Association desires to address your Excellency on the subject of the Judgment recently delivered by the Taotai in the case of the Bank of China, Japan and the Straits (Limited) against two of its Chinese shareholders.

The Judgment in question has no doubt already received your Excellency's attention, but the importance of its bearing upon commercial relations between Chinese and foreigners may, the Committee

trust, be accepted as sufficient ground for some explanation of the issues involved, as well as our reasons for protest.

The immediate case in question was as to the liability of Chinese in respect of shares held by them in a British Company, and the decision of the Taotai is that Chinese shareholders are not bound by the Contract in virtue of which they hold such shares ; he does not deal in any way with the merits of the case before him, but bases his Judgment on that one point alone. It has, no doubt, not escaped your Excellency's recollection that in 1897, when the Bank of China, Japan, and Straits (Limited) brought a similar case against some of its Chinese shareholders, the then Taotai of Shanghai refused to hear the case, giving as his reason that as there was no provision in the Treaties for partnerships between Chinese and foreigners, the holding of shares by Chinese in foreign Companies was illegal. The present Taotai does not take this ground, but the two decisions practically arrive at the same end, varying only in the shiftiness of Chinese jurisprudence. Both of them are unquestionably opposed to Article XVI of the Tientsin Treaty, which lays down that "justice shall be equitably and impartially administered by both Chinese and British."

As your Excellency is aware, shares in British Joint Stock Companies are largely held by Chinese, and in many of these Companies a considerable reserve liability attaches to the shares in respect of uncalled capital, which, in fact, forms a reserve upon which the credit of the Company largely depends. This reserve liability is loosely described by the Taotai as "extra money," which shareholders need not pay if they do not wish to do so. The effect of such a Judgment upon all Companies having Chinese shareholders—irrespective of whether there be a reserve liability upon the shares or not—is of a more than serious character. The question of what protective measures may be found possible under the circumstances may no doubt be more properly left to the Companies themselves ; but it would seem that the first step to be taken is to stop any further transference of shares to Chinese, for it is easy to conceive that if the transference of shares is allowed to continue as heretofore (and the Taotai's Judgment is plainly in the direction of encouraging irresponsible holding of shares by Chinese), the control of a British Company might fall into Chinese hands, and its future would, it is reasonable to suppose, be conducted in some relation to the irresponsibility of its Managers to British law. Again, in the case of Companies whose shares carry a reserve liability, it seems only reasonable that Chinese shareholders should not receive any benefit in the way of dividends, etc., until their reserve liability is paid up in full ; but, indeed, to carry the matter to its logical conclusion, not only should no increase of Chinese holdings in British Companies be permitted, but every effort should be made to eliminate the Chinese element from the share register of such Companies altogether. The commonsense results of the Taotai's Judgment are at once apparent ; his Judgment stops the commercial progress of China on the lines on which experience had proved it can be advanced, namely, by mutual

investment of Chinese and foreign capital, safeguarded by the laws of equity and justice as recognised by all civilised countries. Unless China is prepared to recognise these laws, she is unfit to be received into the international comity, nor can she expect any investment of capital for the development of her resources—her need in this direction is too well known to require comment.

But the Judgment of the Taotai goes far beyond the immediate question of share contracts, of which it was the outcome. It is plain that it strikes at the very root of all commercial relations between Chinese and foreigners, in that the validity of all Contracts now becomes dependent upon the rulings of Chinese Courts, based upon a shadowy, and to us unknown law. The Taotai has ruled that no Chinese subject can enter into an agreement that, in case of a disputed Contract, the law of a foreign country shall be applied to the settlement of such dispute. In giving this ruling he takes his stand upon section II, Article iii. of the Chefoo Convention ; but it is inconceivable that the section in question can bear any such interpretation, and it would have been more to the point had the Taotai quoted from Chinese law in support of his ruling ; not having done so, we can only conclude that he was unable to do so. From the ruling it follows that the most ordinary and most convenient mode of settlement of disputes by arbitration equally falls to the ground, because no Chinaman is now bound to accept an arbitration decision adverse to himself if he thinks that he can evade the Award by an appeal to his own Courts. The Taotai tells us that there is nothing in the law of China compelling a Chinese to pay his liability under Contract in respect of shares ; we may equally expect to hear that the law of China, as interpreted in its Courts, does not compel pecuniary disbursements (except perhaps to the Courts themselves) in respect of any other kind of Contract.

We have no doubt that the far-reaching effects of the Taotai's Judgment are fully appreciated by your Excellency, and in explaining our reasons for protest at this length, we do so chiefly to indorse and to strengthen what has already been written on the subject of the maladministration of justice in the Mixed Courts. The whole question is one which will no doubt receive full consideration at the hands of your Excellency, and we would respectfully suggest that some reasonable and equitable remedy should be made a condition in any negotiation for Tariff and Treaty revision.

I have, etc.,

(Signed) C. J. DUDGEON,¹

Chairman Shanghai Branch, China Association.

MEMORANDUM BY MR. COCKBURN

I am in general agreement with the China Association as to the abstract desirability of the adoption of a code of mercantile law in

¹ *Further Correspondence respecting the Affairs of China* (1899), pp. 49-55.

China, applicable to disputes between foreign and native merchants. Under present circumstances very few cases of any importance, where the defendant is Chinese, are left to the unfettered decision of a Native Court. The foreign plaintiff's Consul is almost invariably obliged to interfere on his behalf, and the matter is often settled without coming into Court at all, or if it does come to a hearing the judgment is not treated as final unless the Consul is satisfied of its substantial justice. This is not the procedure contemplated by the Treaties ; but the alternative of accepting the Judgments of Chinese Courts is equivalent to removing the foreign plaintiff's chance of obtaining justice. He cannot, like his native opponent, bribe the Judge, nor has he at his back the political and social influence a Chinese defendant of any standing can bring to bear. The balance must be redressed by the official influence of his Consul ; it is the latter's duty to see that it is not more than redressed, but kept as level as may be.

But granting the desirability of a change, I cannot share the China Association's belief in the possibility of establishing International Tribunals. It is difficult for anyone acquainted with the jealousies of foreign Powers to feel much hope that the organisation of such Courts would not be blocked ; but even if this difficulty were surmounted, it would not, in my belief, be possible to obtain the co-operation of the Chinese Government. Chaotic as the Chinese procedure seems to be, under the distracting influences affecting it where foreigner and native meet, it is not without its own measure of suitability to the native who has evolved it, and a change would be strongly opposed. Moreover, though the machine of Chinese internal government still creaks on somehow in its accustomed groove, no Chinese official in the higher ranks shows any signs of constructive ability, and the Government as a whole is incapable of even seriously approaching, much less solving, far simpler problems than this, as witness their lethargy with regard to Tariff revision.

If the Chinese Government will not co-operate, I do not see how the establishment of International Courts can be forced upon them. Were a single foreign Power concerned, it might conceivably compel the establishment of Courts and enforce execution of their Judgments, but I cannot imagine all the Powers represented at Peking actuated by sufficient unity of purpose to take similar action.

Within a definite sphere of influence something might be done by setting up Courts administering the law of the "influencing" Power, but a sphere of influence would under those conditions be hardly distinguishable from a protected State.

I am sorry not to be able to take a more optimistic view of the Association's proposals. I take, however, a more cheerful view of the practical working of the present system.

(Signed) HENRY COCKBURN.¹

May 18, 1899.

¹ *Further Correspondence respecting the Affairs of China* (1899), No. 142, pp. 116-117.

APPENDIX LVII

THE MIXED COURT, JULY 1, 1867-JUNE 30, 1868

*Calendar of Proceedings in Criminal Cases before the Mixed Court,
from July 1 to October 31, 1867*

Sittings of Court daily (Sundays excepted).

Wang Tsze, Chinese Magistrate.
Wu Yu Yin, Chinese Magistrate.
R. J. Forrest, Esq., Vice-Consul ; or,
Dr. Jenkins, Interpreter, United States Consulate.
W. R. Stronach, Esq., Interpreter, Her Britannic Majesty's
Consulate.

| Offence as Charged. | Number of Prisoners brought before Mixed Court. | | | | Sentence of 546 Offenders, Convicted by Mixed Court. | | | | | |
|--|---|------------|---------------------------|--------------------------------|--|----------|----------|-----------------------------|--------|-----------|
| | Arrested. | Acquitted. | Convicted by Mixed Court. | Committed to Chief Magistrate. | Warned. | Flogged. | Cangued. | Imprisonment or Hard Labour | Fined. | Deported. |
| Murder, cutting, wound- ing, piracy, gang rob- bery, &c. | 19 | 2 | 14 | 3 | ... | 3 | 3 | ... | 7 | 1 |
| Burglary, robbery, &c. . | 64 | 7 | 38 | 19 | ... | 16 | 2 | 14 | ... | 6 |
| Rape, abduction, seduc- tion, &c. | 3 | 3 | ... | ... | ... | ... | ... | ... | ... | ... |
| Assault, assault and rob- bery, broils, false im- prisonment | 197 | 23 | 167 | 7 | 4 | 41 | 3 | 26 | 93 | ... |
| Petty theft | 290 | 49 | 218 | 23 | 6 | 47 | 15 | 130 | 11 | 9 |
| Municipal offences . . | 76 | 9 | 67 | ... | 31 | ... | ... | 13 | 23 | ... |
| Extortion, perjury, forg- ery, and swindling, &c. | 17 | 2 | 7 | 8 | 1 | 2 | 1 | ... | 3 | ... |
| Receiving stolen pro- perty, miscellaneous . | 63 | 19 | 35 | 9 | 2 | 4 | ... | 12 | 15 | 2 |
| Total | 729 | 114 | 546 | 69 | 44 | 113 | 24 | 195 | 152 | 18 |

376 CASES TRIED AT THE MIXED COURT, 1867-68

*Return of Civil Cases tried at the Mixed Court, from July 1
to October 31, 1867*¹

| Nature of Suit. | Total. | | For Plaintiff. | | For Defendant. | | Referred. | | Withdrawn. | | Unsettled. | |
|--|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| | Number of Cases. | Amount in Taels. | Number of Cases. | Amount in Taels. | Number of Cases. | Amount in Taels. | Number of Cases. | Amount in Taels. | Number of Cases. | Amount in Taels. | Number of Cases. | Amount in Taels. |
| Breach of Contract . | 17 | 58,474 70 | 10 | 29,490 30 | ... | ... | ... | ... | 6 | 26,403 40 | 1 | 2,580 0 |
| Bill of exchange and promissory note . | 3 | 1,078 50 | 2 | 750 0 | ... | ... | ... | ... | 1 | 328 50 | ... | ... |
| Balance of account . | 2 | 2,605 13 | 1 | 800 0 | ... | ... | ... | ... | ... | ... | 1 | 1,805 13 |
| Claim under guarantee bond . | 1 | 785 3 | 1 | 737 28 | ... | ... | ... | ... | ... | ... | ... | ... |
| Damage loss . | 6 | 3,994 2 | 1 | 275 0 | 1 | 2,192 11 | ... | ... | 3 | 493 0 | 1 | 1,033 91 |
| Goods supplied . | 3 | 281 79 | 1 | 34 16 | 1 | 236 87 | ... | ... | ... | ... | 1 | 10 76 |
| Money advanced . | 3 | 13,862 77 | 3 | 13,862 77 | ... | ... | ... | ... | ... | ... | ... | ... |
| Municipal taxes . | 4 | 475 0 | 4 | 475 0 | ... | ... | ... | ... | ... | ... | ... | ... |
| Rent . | 1 | 6 59 | ... | ... | 1 | 6 59 | ... | ... | ... | ... | ... | ... |
| Salvage . | 1 | 800 0 | 1 | 800 0 | ... | ... | ... | ... | ... | ... | ... | ... |
| Total . . . | 41 | 82,363 53 | 24 | 47,224 51 | 3 | 2,436 57 | ... | ... | 10 | 27,224 90 | 4 | 5,429 80 |

*Return of Civil Cases heard at the Mixed Court, from
November 1, 1867, to June 30, 1868*

| Nature of Suits. | Total. | | For Plaintiff. | | For Defendant. | | Referred. | | Withdrawn. | | Unsettled. | |
|--------------------------------------|------------------|---------------|------------------|---------------|------------------|--------------|------------------|--------------|------------------|---------------|------------------|------------|
| | Number of Cases. | Amount. | Number of Cases. | Amount. | Number of Cases. | Amount. | Number of Cases. | Amount. | Number of Cases. | Amount. | Number of Cases. | Amount. |
| Breach of Contract | 18 | Taels. 76,580 | 4 | Taels. 19,840 | 1 | Taels. 2,000 | 1 | Taels. 5,240 | 12 | Taels. 49,500 | ... | Taels. ... |
| Bill of exchange and promissory note | 9 | 6,383 | 6 | 2,493 | 2 | 2,490 | ... | ... | ... | ... | 1 | 1,200 |
| Balance of account | 8 | 1,578 | 7 | 1,378 | ... | ... | 1 | 200 | ... | ... | ... | ... |
| Claim under guarantee bond . | 1 | 778 | 1 | 438 | ... | ... | ... | ... | ... | ... | ... | ... |
| Claim for interest . | 1 | 300 | 1 | 300 | ... | ... | ... | ... | ... | ... | ... | ... |
| Damage loss . | 3 | 692 | 2 | 644 | ... | ... | ... | ... | 1 | 48 | ... | ... |
| Goods supplied . | 1 | 350 | 1 | 350 | ... | ... | ... | ... | ... | ... | ... | ... |
| Money advanced . | 3 | 900 | 1 | 216 | 1 | 350 | ... | ... | 1 | 50 | ... | ... |
| Rent . . . | 3 | 1,480 | 2 | 80 | ... | ... | ... | ... | 1 | 1,400 | ... | ... |
| Wages . . . | 1 | 12 | ... | ... | 1 | 12 | ... | ... | ... | ... | ... | ... |
| Total . . . | 48 | 89,053 | 25 | 25,739 | 5 | 4,852 | 2 | 5,440 | 15 | 50,998 | 1 | 1,200 |

(Signed) R. J. FORREST.²

¹ [Memorandum by Vice-Consul Forrest on the Mixed Court at Shanghai.]
Correspondence respecting the Revision of the Treaty of Tientsin, 1871, pp. 53-55.

² *Ibid.* pp. 166-170.

PROCEDURE OF THE COURT OF CONSULS 377

*Calendar of Proceedings in Criminal Cases before the Mixed Court,
from November 1, 1867, to June 30, 1868*

Sittings of Court daily (Sundays excepted).

Wu Yu Yin, Magistrate.

R. J. Forrest, Esq., Her Britannic Majesty's Vice-Consul.

Dr. Jenkins, Interpreter, United States Consulate.

| Offences as Charged. | Number of Prisoners brought before Mixed Court. | | | | Sentence of 746 Offenders, Convicted by Mixed Court. | | | | | |
|--|---|------------|------------------------------|-----------------------------------|---|----------|----------|---------------------------------|--------|-----------|
| | Arrested. | Aequitted. | Convicted by Mixed Court. | Committed to Chief Magistrate. | Warned. | Flogged. | Cangued. | Imprisonment or Hard Labour. | Fined. | Deported. |
| Murder, cutting, and wounding, piracy, gang robbery, &c. . . . | 5 | 1 | ... | 4 | ... | ... | ... | ... | ... | ... |
| Burglary, robbery. . . | 20 | ... | 15 | 5 | ... | 8 | 2 | 4 | ... | 1 |
| Rape, abduction, seduc- tion, &c. | 1 | ... | ... | 1 | ... | ... | ... | ... | ... | ... |
| Assault, assault and rob- bery, broils, false im- prisonment | 350 | 80 | 233 | 37 | 35 | 62 | 3 | 28 | 104 | 1 |
| Petty thefts | 565 | 92 | 428 | 45 | 18 | 115 | 11 | 249 | 27 | 8 |
| Municipal offences . . | 75 | 10 | 65 | ... | 17 | ... | 1 | 8 | 39 | ... |
| Extortion, perjury, forg- ery, and swindling, &c. | 21 | 3 | 8 | 10 | 1 | 3 | ... | 2 | ... | ... |
| Receiving stolen prop- erty, miscellaneous . | 18 | 2 | 15 | 1 | 2 | 1 | ... | 2 | 10 | ... |
| Total | 1,055 | 188 | 764 | 103 | 73 | 189 | 17 | 293 | 180 | 10 |

(Signed) R. J. FORREST.

APPENDIX LVIII

RULES OF PROCEDURE OF THE COURT OF CONSULS, SHANGHAI.

(Approved by the Consular Body, July 10, 1882.)

Rule 1. Every petition and other pleading filed in the Court and all notices and other documents issuing from the Court shall be entitled "In the Court of Consuls."

Rule 2. The Court will appoint a Secretary whose name and address will be made public and who shall hold the office until the

378 PROCEDURE OF THE COURT OF CONSULS

Court otherwise directs. The Secretary shall have charge of all records, and under the direction of the Court issue and serve or cause to be served all notices and other documents. He shall also be the medium of all correspondence.

Rule 3. Suits shall be commenced and proceeded with in person or by attorney, and suitors may be heard with or without counsel.

Rule 4. The language of the Court will be English.

Rule 5. All proceedings shall be commenced by a petition to the Court to be filed in quadruplicate and to state all facts material to the issue in distinct paragraphs.

Rule 6. The petition will be served upon the defendant with notices to file an answer in quadruplicate within fourteen days from the date of service. A copy of the answer will be served on the plaintiff for his counsel under the direction of the Court.

Rule 7. Amendments and other proper pleadings will be admitted upon such terms as the Court may impose, and such interim order may be made prior to the hearing of the cause as the Court may consider necessary.

Rule 8. When it appears to the Court that a cause is ready to be heard such cause will be set down for hearing, and notice of the date and place of hearing will be given to the parties.

Rule 9. Sittings of the Court will be public and its proceedings recorded by the Secretary.

Rule 10. The onus of producing witnesses shall be with the parties, but the Court will, as far as practicable, aid in procuring the attendance of witnesses. Evidence will be taken on oath or otherwise as the witness may consider binding. The examination of witnesses will be conducted as the Court may direct.

Rule 11. A failure to respond to any order or notice issued by the Court will entitle the adverse party to judgment by default, and the Court shall be empowered to give judgment accordingly.

Rule 12. In any case upon application within sixty days after judgment the Court may order re-hearing upon such terms as seem just.

Rule 13. Special cases where the facts are admitted may be submitted in writing to the Court for decision without appearance of the parties.

Rule 14. A minute of all orders shall be drawn up and shall be signed by the Consuls forming the Court, or a majority of them, and all orders shall be expressed to be made "By the Court" and shall be signed by the Secretary.

Rule 15. Judgment will be given in writing by the Judges of the Court, and either be read in Court after notice or served upon the parties.

Rule 16. The fee shall be for hearing \$10—for each notice issued and served \$3—and such fees for recording the proceedings shall be allowed as the Court may direct. A deposit in such sum as the Court may think sufficient to secure payment of fees will be required of each

petitioner. The costs, including those of counsel, in the discretion of the Court, shall be paid as the Court directs.

Rule 17. All fees shall be at the disposal of the Court for the remuneration of the Secretary.

APPENDIX LIX

RECENT LEGISLATION OF THE SOUTHERN NATIONALIST GOVERNMENT

I

JUDICIAL RULES AND ORDINANCES IN ACTUAL OPERATION UNDER THE NATIONALIST GOVERNMENT IN CANTON

That the policy to be adopted for the administration of justice shall be to constructively originate a judicature according to the Party and Revolutionary spirit. (Passed at the 17th Meeting of the Political Committee on September 9, 1926.)

The policy to be adopted for the administration of justice is, generally speaking, the reform of the judiciary. The judicial system, as it exists, is not in accordance with the Party and Revolutionary spirit, and the present judges are mostly anti-Revolutionists. Under the circumstances, reforms are impossible unless there are introduced some fundamental changes which are nothing less than the origination of a judiciary in accordance with the Party and Revolutionary spirit. This most concise and clear explanation contains the principle for the judicial reform and it may be analysed into the following points :

1. To renew the judicial conceptions. Before, the universally recognised judicial conceptions were the "Independence of the Judiciary" and "Judges are non-partisans." These are now admitted as antagonistic to the principles of the Party and the spirit of Revolution. If the Judiciary is independent, then the administration of justice and the policies of the government may run opposite courses. It may even be that when the government originates Revolutionary measures, they would come into collision with each other. It is therefore necessary that the Judiciary should be unified into the Government. In the organisation of the Soviet Russian Government, not only are the legislature and the executive fused into one functionary, but the Judiciary is not independent. This is a new system which overthrows the conception of the independence of the Judiciary. It may be said that this is not in conformity with the aim of the "Five Powers."¹ But it must be understood that the principle of the "Five Powers" is the separation

¹ By the Five Powers are meant the Five Constitutional Powers of the Government as laid down by Dr. Sun Yat Sen in his Doctrine of Democracy, viz. the legislative, executive, judicial, censoring, and examining powers.

of the various departments, but the source of power must be in the hands of the Party. It is thus that when we say to rule the country by a party we recognise the party as the repository of the highest sovereignty, and the five functionaries derive their power from this source. Those departments that stand independent of the Party are absolutely forbidden to exist. The statement that judges should not be partisans is as commonly held as that that soldiers should not be partisans. But in those places which are under the sovereignty of the Nationalist Government, these fallacious statements have been frustrated. Those who have frustrated them most severely are the soldiers, while the judges join the Party just as a matter of form. With regard to the statement that judges should not be partisans, why is it that it is fallacious? Judges, to be above criticism, must be loyal members of the Party. Those who maintain the other point of view say that judges who are partisans are liable to bias. Even those who are not so well informed in our Party entertain the idea that judges are to decide cases according to the established system of Law (*i.e.* to administer the Law) and they seem to have nothing to do with the cause of Revolution. They do not know that the theory of Revolution does not agree with this conception. The Nationalist Party is the source of the Republic. To work for the party is to work for the nation. All members of the Party should be the most enlightened elements of the country, and it cannot be that partisan judges will be biased. But this cannot be said of the false members, who make use of the Party for their own activities and interests. True members will obey the principles of the party, and devote their energy to the revolution movement. These men are needed to make good judges. The judiciary of Kwangtung is in a darker condition than that of anywhere. The judges belong to various sects, and their ideas are mostly anti-revolutionary. Their decisions are based on the unorthodox judicial methods of Peking. Unless there is some fundamental change, revolution would just be an empty glory, and the people who daily exist among the legal relations are grieved. This is the first point in the consideration of the policy of the administration of justice and of the abolishing of old abuses.

2. To reform the judicial officials. At present under the regime of the Nationalist Government, the officials employed in all the judicial organisations are mostly graduates of schools of law and politics within the country. In some cases, there are graduates of the Faculty of Law of Western or Japanese Universities. But, on the whole, they are not men suitable for the revolutionary judiciary. What they have learnt is not revolutionary, but anti-revolutionary legal principles. If they are expected to become self-conscious one day and cast away what they have previously learnt to fit themselves with revolutionary theories for the administration of justice, it is impossible to get one out of a hundred cases. Moreover, judicial officials have always been noted for their qualifications and they have some sort of protection. Thus all the judicial officers of high grades are old mandarins who have even lost

their early spirits of a student's life. And this class of corrupt and old officials cannot be changed at once because they enjoy the protection due to their judicial position. They have thus even been allowed to continue their corrupt practices. In Kwangtung the practice of bribery is most prevalent and the nomination into office of the judicial officers is mostly brought about by bribery, and a commission is bought at exorbitant cost. It is impossible to indict such acts, as it is difficult to prove the offer and acceptance of such bribery. The litigants of a lawsuit are fond of bribing the judges to get a favourable decision, and their transaction of bribery is carried out in the most undetectable and secret ways. There are cases when the attorneys, clerks of the courts of justice and the corrupt judges form a clandestine group and ally in evil. This cannot be looked upon without pain and regret. Those who have some self-respect may not stoop to the practice of bribery, but their spirit and habits have been so far assimilated into their nature as to be but reformable. When I served in the Supreme Court and was in charge of all the matters incidental to the administration of justice, I proposed the reform of the anti-revolutionary elements in the judiciary and the setting in order of the courts of justice, but I met with stubborn and wild opposition of this class of judicial officials. Though they were barely defeated, many of the reforms have not been enforced. But these people have no definite aims, and they will change their ideas to a certain extent to keep their position. There are two methods of reform :

(a) the establishment of a political and Party training class for the judicial officers who are to be inculcated with revolutionary and new ideals ; and

(b) the abolishment of the restriction of qualifications and special protections so that the Revolutionists can be promoted easily and the non-revolutionists can be degraded easily.

This is the second point in the consideration of the policy for the administration of justice and the abolishing of the old abuses.

3. To alter the Laws. The codes of our country have been formulated directly after the Japanese codes and indirectly after the old German codes. In a word, they are non-revolutionary and anti-revolutionary codes. These codes are to protect the privileged classes, the system of private ownership which has its source in plundering, the agnatic and family absolute system, and all those programmes for the suppression of revolution. It is disgraceful and monstrous to retain these codes under the regime of the Nationalist Government, *e.g.* in the criminal code it is a punishable crime to unite for a strike, and it is punishable to assemble a crowd. Not only is it that all these are not found in Revolutionary countries, but they are not found in anti-revolutionary countries like Great Britain and Japan. (A strike is not a punishable crime.) Even if they are, they are not so severe as those in China. (*E.g.* the Disturbance Acts, No. 164, which prescribes that any mass meeting of a riotous and coercive nature is punishable if it is not dispersed after warning be given. It should not be punishable

unless warnings are given three times.) Besides this we can meet with many imperfect statutes. All the codes must be wholly examined and fundamentally amended. This is the third point in the consideration of the policy for the administration of justice and the abolishing of the old abuses.

The three points mentioned above are only the most general ones. It will be a great enterprise to launch an actual reform which may court the favour or the resentment of any individual. Thus it is inadvisable to introduce any reform on the opinions of a single person. I beg to propose the organisation of a committee for the Reformation of the Judicial System which shall be constituted by representatives from the Central Executive Committee, the Ordinary Business Committee, and the Heads of its various Departments; representatives from the Ordinary-Business Committee of the Provincial and Canton Party Organisations and its various heads of departments; representatives from the Provincial Farmers' Union, the Women's Emancipation Society, the National Labour Union, the Canton-Hongkong Strikers' Union, the Four Chambers of Commerce, and the Agricultural, Industrial, Labour, Commercial and Educational Associations; the Departmental Chief of the Land Office; and the Chairman of the Judicial Committee. This Committee shall formulate a Judicial Reform Bill which, when passed by the Central Executive Committee, shall be duly promulgated and enacted by the Nationalist Government. It is only then that any reforms will be in accord with the Party spirit and free from any defects that may accompany hasty alteration based on arbitrary and partial views. The merit of this proposal is for the meeting to decide.

Hsu CHIEN.

II

PROPOSED REFORMS FOR THE JUDICIARY (PASSED BY THE JUDICIARY REFORM COMMITTEE ON 11th NOVEMBER, 1926, AND PENDING APPROVAL BY THE CENTRAL POLITICAL COMMITTEE).

Article I.—To change the titles of the Law Courts. The system of two grades of courts and two trials shall be adopted.

All judicial organisations shall discard their titles of administrative departments, and shall be called Courts of Justice. Their grades and precedence are as follows :

1. Central Courts of Justice—of two grades : 1st. The Supreme Court and its branches. 2nd. The Appeal Court, named after the provinces.
2. Local Courts of Justice—of two grades : 1st. The District and Municipal Courts of Justice—named after the Districts and Municipalities. 2nd. The People's (or Common) Courts of Justice.

The Supreme Court shall be established in the seat of the Nationalist Government, and its branch courts in the various provinces. The

Appeal Courts shall be established in the provincial capitals and the District and Municipal Courts in the districts or municipalities. In those districts where lawsuits are scarce, one court of justice may be established for two or three districts. The People's (or Common) Courts shall be established in big trading towns or in the villages.

The jurisdiction of the People's Courts is as follows :

1. Civil : Cases in which the value of the object of the lawsuit is less than \$300 and those cases taken cognizance of by the Courts of First Instance as laid down by the Provisional Civil Code.

2. Criminal : Offences punishable by an imprisonment for a period of the fifth degree or by detention or by a fine, and those cases dealing with outdoor theft, robbery and stolen goods.

The jurisdiction of the District and Municipal Courts is as follows :

1. Civil : Cases concerning objects valued over \$300 and those concerning personal charges.

2. Criminal : Offences punishable by an imprisonment for a period of the fourth degree and over.

The decisions of the above two courts are of the First Trial.

The jurisdiction of the Appeal Courts is as follows :

1. Over appeals of Civil cases that have undergone the First Trial by a District or a Municipal Court, and of criminal cases that have been sent for the Second and Final Trial (criminal cases punishable by death excepted) ; and

2. Over the first trial for anti-Revolutionary offences responsible for internal, external, or international political troubles.

The jurisdiction of the Supreme Court is as follows :

1. Over appeals of civil cases that have undergone the First Trial by the District or Municipal Courts, and the point at issue being a question of Law ; and the First and Final Trial for Criminal cases ;

2. Over the Second and Final Trial for appeals of cases that have undergone the First Trial by a Court of Appeal.

3. The Third and the Final Trial of appeals of capitally punishable criminal cases that have undergone the Second Trial by an Appeal Court.

Article II.—To abolish the statutory prohibition on judges to be party members. Judges must be members of the Party and of good social standing and must have over three years' legal experience.

Article III.—To abolish the administrative offices within the Courts of Justice. Administrative organisations within the Court shall be managed by the Court Administrative Committee.

The personnel of the Courts :

The personnel of the Local Courts shall be nominated for office or dismissed by the Chief of the Provincial Judicial Department and appointed or dismissed by the Executive Committee of the Provincial Government. The personnel of the Central Courts shall be nominated for office or dismissed by the Minister of Justice and appointed or dismissed by the Executive Committee of the Nationalist Government.

The Administrations of the Courts, such as the receiving and despatching of petitions, the classifying of cases, the delivering of judgments, the distributing of duties, the making of the budget and the accounts, the keeping and the checking of fines and stolen goods, and the drawing-up of accounts, are to be managed by the Court Administrative Committee. The organisation of the Court Administrative Committee is as follows :

1. In the People's Courts it shall be constituted by one judge, one assessor, and one clerk.

2. In the District or Municipal Courts, it shall be constituted by the Chief of the Civil Department, the Procurator, and the Chief Clerk.

3. In the Appeal and Supreme Courts, it shall be constituted by the Chief of the Criminal Department, the First Public Procurator, and the Chief Clerk.

Article IV.—To abolish the Procuratorate and to institute procurators for service within the Courts of Justice. The duties of the public procurators are :

1. To prosecute offences directly injurious to public policy, and to institute criminal cases which are not brought into court by the injured party or the members of his or her family ;

2. To express opinions to the Court with regard to criminal cases punishable by death ;

3. To direct the military or police forces for the arrest of criminals, and to execute judgments ; and

4. To carry out other statutory duties.

Article V.—To adopt the system of trial by assessors and that by jury.

In the People's Courts of Justice there shall be, besides the judges, the assessors. In a case where members of the Nationalist Party are parties, an assessor shall be elected for the case by the Party Organisation of that place. In a case where the farmers are parties, an assessor shall be elected for the case by the Farmers' Union of that place. In a case where labourers are parties, an assessor shall be elected for the case by the Labour Union of that place. In a case where merchants are parties, an assessor shall be elected for the case by the Chamber of Commerce of that place. In a case where women are parties, an assessor shall be elected by the Party Woman's Organisation of that place. Assessors must have a legal knowledge and they can assist in decisions whether of law or of fact.

In the District or Municipal Courts and in the Central Courts, there shall be, besides the Departmental Chiefs and judges to administer the Law, jurors who are to assist in decisions of fact. The jury shall consist of from two to four members. The method of election shall be as the above mentioned.

Article VI.—To reduce the costs of a lawsuit and the duty on a petition, and to levy a charge on the execution of judgments.

At present the Courts of Justice impose too heavy costs on a law-

suit and duties on a petition. The costs shall be reduced by 50 per cent. and the duties by 60 per cent.

But for the execution of judgments of civil cases, fees shall be charged. A table of the amounts of fees to be charged shall be further formulated.

(NOTE.—Owing to recent disturbances in Southern China, and the cleavage in the Nationalist Party, the above proposed measures, except Articles III and IV, have not been duly approved by the Central Executive Committee.)

III

THE LABOUR UNION STATUTE

Article I.—All those above 16 years of age, whether male or female, who are engaged in the same vocation or trade that requires mental or physical labour, servants in households or public organisations, school teachers, staff members of Government offices, when assembled together to the number of fifty members of the same trade, can organise labour unions by virtue of this statute.

Article II.—The Labour Union is a juristic person, and is not responsible for the private action of the individual members.

Article III.—The Labour Union and the Employers' Organisations are of an equal standing, and if necessary, they can hold joint meetings to discuss such problems as those relating to the promotion of the status and the welfare of the labourers, and to the discussion and settlement of disputes and conflicts that may rise between the labourers and the employers.

Article IV.—The Labour Union, within its limits, shall have freedom of speech, publication and educational enterprises.

Article V.—Should the limits of the constituting locality of the Labour Union exceed those of the existing administrative locality, the Union must petition to a higher administrative office for the appointment of a controlling organ.

Article VI.—The organisation of the Labour Union shall be based on trades. If there are exceptional conditions and it be the wish of the majority of members, the organisation may be based on vocation. When there are two or more unions that have already existed and are of the same nature, there should be a Labour Unions' Union for co-operation and re-organisation. The larger Union can be united or fused into unions of the same nature and in other provinces or countries.

Article VII.—Organisers of a Labour Union must obtain the signatures of fifty or more members of the same trade for the letter of application for registration which must be sent, accompanied by two copies of regulations and two copies of statements concerning the name, address and occupation of the executive officers, to the local administrative offices.

The controlling organ of the registration is the District Magistracy or the Municipal Council.

Labour organisations that have not been registered, cannot enjoy the privileges and protection afforded by this statute.

Article VIII.—The regulation of the Labour Unions must contain the following items :

1. Name, and nature of the trade.
2. Objects and services.
3. Locality.
4. Titles, duties and methods of election, of the executive officers.
5. The organisation of meetings and the mode of voting.
6. The amount of subscription and the method of collecting.
7. The qualifications, privileges and duties of the members.

Article IX.—Every six months the Labour Union must make a detailed report containing the following items and present it to the local governing administrative organ :

1. The names and occupations of the executive officers.
2. The members' names and numbers, their date of admission, place of occupation, and other conditions concerning their work, dismissal, change of work, change of address, death and injury.
3. The financial condition.
4. The success of any enterprise.
5. Any strikes or disputes or conflicts—their progress and ending.

Article X.—The duties of the Labour Union shall be as follows :

1. To maintain and protect the interests of the members.
2. To institute vocational introductions for the members.
3. To close contracts with the employers as a body.
4. To organise, for the convenience and benefit of the members, co-operative banks, savings banks and labour insurance.
5. To organise, for the enjoyment and amusement of the members, various entertainments, members' re-unions and clubs.
6. To organise, for the convenience and benefit of the members, various co-operative societies for production, distribution, lodgings and purchasing stores.
7. To organise, for the promotion of the members' knowledge and ability, various vocational training, liberal education, labour training, lectures, reading rooms, libraries, and other periodical or non-periodical publications.
8. To establish, for the welfare of the members, hospitals or medical treatment depôts.
9. To settle all disputes between members.
10. With regard to disputes or conflicts arising between the Labour Union or its members and the employers, to make the necessary enquiries, or to unite all members for a common movement, or to hold a joint meeting with the employers for a settlement by arbitration, or to select, together with the employers, a third party to arbitrate, or to petition to the

governing administrative organ to send deputies for enquiry and arbitration.

11. With regard to the formulation, alteration or cancellation of statutes concerning the industries or the labour classes, to express its opinions to the administrative organs, courts of justice and the councils, and to reply to all enquiries sent by the administrative organs, courts of justice and the councils.
12. To investigate and to publish in reports the economical conditions of the labourers, and the conditions of living of members of the same trade.
13. To undertake all other enterprises for the promotion of the interests of the members, the betterment of the industrial working system, and the increase of the members' welfare and knowledge.

Article XI.—The executive officers shall be elected from and by the members of the Union in accordance with the methods adopted by the Union. They shall be responsible for acts done on behalf of the members of the Union in relation to others.

Article XII.—There shall be no class distinction among the members. The rate of subscriptions, however, may be fixed according to the income of the member. Members shall not be liable to general subscriptions exceeding 15 per cent. of their incomes, special foundation funds, and other provisional funds or shares being excepted.

Article XIII.—The members of the Union, when necessary, can appoint representatives to examine and check all books and documents belonging to the Union and to investigate into the financial conditions.

Article XIV.—When necessary the Union can follow the resolution passed by the majority at a meeting to declare a strike which, however, must not be dangerous to the public safety and injurious to any person's life and property.

Article XV.—The Union can express its opinions to the employers concerning the working hours, the working conditions and the promotion and improvement of the sanitation of the factories. It may also appoint representatives to sit with the representatives of the employers in a joint meeting for the discussion and solution of such problems.

Article XVI.—The administrative organs shall undertake to investigate into the causes of any dispute or conflict arising between the unions in the district and the employers, and also to arbitrate but not compulsorily.

Article XVII.—When the conflicts between the labour organisation of some public service and the employers are getting serious or prolonged the administrative organs shall, after some just and careful investigation and arbitration measures, resort to a compulsory settlement, should both sides not give in.

Article XVIII.—The following properties belonging to the Labour Union or under its management shall not be confiscated :

1. The union premises, school buildings, libraries, clubs, hospitals, medical treatment depôts, and other movables and unmovables belonging to the various co-operative undertakings such as these for production, distribution, lodgings and purchasing stores.
2. The foundation funds, labour insurance funds, and members' savings funds that are for the interests of the members.

Article XIX.—Regarding those items contained in Articles VIII and IX. When the reports supplied by the union organisers or officers are not perfectly true, or when no reports have been supplied, the administrative organs shall order for a true report or for a supplementary report. Until there is a true report or a supplementary report, the acts of the Union shall not enjoy the protection of this Statute.

Article XX.—This Statute shall not be applied to those assemblies and meetings forbidden by the Police Laws of the Criminal Code.

Article XXI.—This Statute shall be enacted from this date of promulgation.

APPENDIX LX

UNITED STATES REVISED STATUTES RELATING TO CONSULAR JURISDICTION IN CHINA

Section 4083.—To carry into full effect the provisions of the treaties of the United States with China, Japan, Siam, Egypt and Madagascar respectively, the minister and the consuls of the United States duly appointed to reside in each of those countries, shall, in addition to other powers and duties imposed upon them, respectively, by the provisions of such treaties respectively, be invested with the judicial authority herein described, which shall appertain to the office of minister and consul, and be a part of the duties belonging thereto, wherein, and so far as the same is allowed by treaty.

Section 4084.—The officers mentioned in the preceding section are fully empowered to arraign and try, in the manner herein provided, all citizens of the United States charged with offences against law, committed in such countries, respectively, and to sentence such offenders in the manner herein authorised; and each of them is authorised to issue all such processes as are suitable and necessary to carry this authority into execution.

Section 4085.—Such officers are also invested with all the judicial authority necessary to execute the provisions of such treaties, respectively, in regard to civil rights, whether of property or person; and they shall entertain jurisdiction in matters of contract, at the port where, or nearest to which, the contract was made, or at the port at which, or nearest to which, it was to be executed, and in all other matters at the port where, or nearest to which, the cause of controversy

arose, or at the port where, or nearest to which, the damage complained of was sustained, provided such port be one of the ports at which the United States are represented by consuls. Such jurisdiction shall embrace all controversies between citizens of the United States, or others, provided for by such treaties, respectively.

Section 4086.—Jurisdiction in both civil and criminal matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and as far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries ; and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.

Section 4087.—Each of the consuls mentioned in Section 4083, at the port for which he is appointed, is authorised upon facts within his own knowledge, or which he has good reason to believe true, or upon complaint made or information filed in writing and authenticated in such way as shall be prescribed by the minister, to issue his warrant for the arrest of any citizen of the United States charged with committing in the country an offence against law ; and to arraign and try such offender ; and to sentence him to punishment in the manner herein prescribed.

Section 4089.—Any consul when sitting alone may also decide all cases in which the fine imposed does not exceed five hundred dollars, or the term of imprisonment does not exceed ninety days ; but in all such cases, if the fine exceeds one hundred dollars, or the term of imprisonment for misdemeanour exceeds sixty days, the defendants or any of them, if there be more than one, may take the case, by appeal, before the minister, if allowed jurisdiction, either upon errors of law or matters of fact, under such rules as may be prescribed by the minister for the prosecution of appeals in such cases.

Section 4090.—Capital cases for murder or insurrection against the government of either of the countries hereinbefore mentioned, by citizens of the United States, or for offences against the public peace, amounting to felony under the laws of the United States, may be tried before the minister of the United States in the country where the offence is committed if allowed jurisdiction ; and every such minister may issue all manner of writs, to prevent the citizens of the United States from enlisting in the military or naval service of either of the said countries, to make war upon any foreign Power with whom the United States are at peace, or in the service of one portion of the people

against any other portion of the same people ; and he may carry out this power by a resort to such force belonging to the United States, as may at the time be within his reach.

Section 4091.—Each of the ministers mentioned in section 4083 shall, in the country to which he is appointed, be fully authorised to hear and decide all cases, criminal and civil, which may come before him, by appeal, under the provisions of this Title, and to issue all processes necessary to execute the power conferred upon him ; and he is fully empowered to decide finally any case upon the evidence which comes up with it, or to hear the parties further, if he thinks justice will be promoted thereby ; and he may also prescribe the rules upon which new trials may be granted, either by the consuls or by himself, if asked for upon sufficient grounds.

Section 4092.—On any final judgment in a consular court of China or Japan, where the matter in dispute exceeds five hundred dollars and does not exceed two thousand five hundred dollars, exclusive of costs, an appeal shall be allowed to the minister in such country, as the case may be. But the appellant shall comply with the conditions established by general regulations. And the ministers are hereby authorised and required to receive, hear and determine such appeals.

Section 4093.—On any final judgment in any consular court of China or Japan, where the matter in dispute, exclusive of costs, exceeds the sum of two thousand five hundred dollars, an appeal shall be allowed to the circuit court for the district of California, and upon such appeal a transcript of the libel, bill, answer, depositions, and all other proceedings shall be transmitted to the circuit court, and no new evidence shall be received on the hearing of the appeal ; and the appeal shall be subject to the rules, regulations, and restrictions prescribed in law for writs of error from district courts to circuit courts.

Section 4094.—On any final judgment of the minister to China, or to Japan, given in the exercise of original jurisdiction, where the matter in dispute, exclusive of costs, exceeds two thousand five hundred dollars, an appeal shall be allowed to the circuit court, as provided in the preceding section.

Section 4095.—When any final judgment of the minister to China, or to Japan, is given in the exercise of original or of appellate criminal jurisdiction, the person charged with the crime or offence, if he considers the judgment erroneous in point of law, may appeal therefrom to the circuit court for the district of California ; but such appeal shall not operate as a stay of proceedings, unless the minister certifies that there is probable cause to grant the same, when the stay shall be such as the interests of justice may require.

Section 4096.—The circuit court for the district of California is authorised and required to receive, hear and determine the appeals provided for in this Title, and its decisions shall be final.

Section 4097.—In all cases, criminal and civil, the evidence shall be taken down in writing in open court, under such regulations as may be made for that purpose ; and all objections to the competency or

character of testimony shall be noted, with the ruling in all such cases, and the evidence shall be part of the case.

Section 4098.—It shall be the duty of the ministers and the consuls in the countries mentioned in section 4083 to encourage the settlement of controversies of a civil character, by mutual agreement, or to submit them to the decision of referees agreed upon by the parties ; and the minister in each country shall prepare a form of submission for such cases, to be signed by the parties, and acknowledged before the consul. When the parties have so agreed to refer, the referees may, after suitable notice of the time and place of meeting for the trial, proceed to hear the case, and a majority of them shall have power to decide the matter. If either party refuses or neglects to appear, the referees may proceed *ex parte*. After hearing any case such referees may deliver their award, sealed, to the consul, who, in court, shall open the same ; and if he accepts it, he shall indorse the fact, and judgment shall be rendered thereon, and execution issued in compliance with the terms thereof. The parties, however, may always settle the same before return thereof is made to the consul.

Section 4099.—In all criminal cases which are not of a heinous character, it shall be lawful for the parties aggrieved or concerned therein, with the assent of the minister in the country, or consul, to adjust and settle the same among themselves, upon pecuniary or other considerations.

Section 4100.—The ministers and consuls shall be fully authorised to call upon the local authorities to sustain and support them in the execution of the powers confided to them by treaty, and on their part to do and perform whatever is necessary to carry the provisions of the treaties into full effect, so far as they are to be executed in the countries, respectively.

Section 4101.—In all cases, except as herein otherwise provided, the punishment of crime provided for by this Title shall be by fine or imprisonment, or both, at the discretion of the officer who decides the case, but subject to the regulations herein contained, and such as may hereafter be made. It shall, however, be the duty of such officer to award punishment according to the magnitude and aggravation of the offence. Every person who refuses or neglects to comply with the sentence passed upon him shall stand committed until he does comply, or is discharged by order of the consul, with the consent of the ministers in the country.

Section 4102.—Insurrection or rebellion against the government of either of those countries, with intent to subvert the same, and murder, shall be capital offences, punishable with death ; but no person shall be convicted of either of those crimes, unless the consul and his associates in the trial all concur in opinion, and the minister also approves of the conviction. But it shall be lawful to convict one put upon trial for either of these crimes, of a less offence of a similar character, if the evidence justifies it, and to punish, as for other offences, by fine or imprisonment, or both.

Section 4103.—Whenever any person is convicted of either of the crimes punishable with death, in either of those countries, it shall be the duty of the minister to issue his warrant for the execution of the convict, appointing the time, place and manner ; but if the minister is satisfied that the ends of public justice demand it, he may from time to time postpone such execution ; and if he finds mitigating circumstances which authorise it, he may submit the case to the President for pardon.

Section 4104.—No fine imposed by a consul for a contempt committed in presence of the court, or for failing to obey a summons from the same, shall exceed fifty dollars ; nor shall the imprisonment exceed twenty-four hours for the same contempt.

Section 4105.—Any consul, when sitting alone for the trial of offences or misdemeanours, shall decide finally all cases where the fine imposed does not exceed one hundred dollars, or the term of imprisonment does not exceed sixty days.

Section 4106.—Whenever, in any case, the consul is of opinion that, by reason of the legal questions which may arise therein, assistance will be useful to him, or whenever he is of opinion that severer punishments than those specified in the preceding sections, will be required, he shall summon, to sit with him on the trial, one or more citizens of the United States, not exceeding four, and in capital cases not less than four, who shall be taken by lot from a list which had previously been submitted to and approved by the minister, and shall be persons of good repute and competent for the duty. Every such associate shall enter upon the record his judgment and opinion, and shall sign the same ; but the consul shall give judgment in the case. If the consul and associates concur in opinion, the decision shall, in all cases, except of capital offences and except as provided in the preceding section, be final. If any of the associates differ in opinion from the consul, the case, without further proceedings, together with the evidence and opinions, shall be referred to the minister for his adjudication, either by entering up judgment therein, or by remitting the same to the consul with instructions how to proceed therewith.

Section 4107.—Each of the consuls mentioned in section 4083 shall have, at the port for which he is appointed, jurisdiction as herein provided in all civil cases arising under such treaties, respectively, wherein the damages demanded do not exceed the sum of five hundred dollars ; and if he sees fit to decide the same without aid, his decision thereon shall be final. But whenever he is of the opinion that any such case involves legal perplexities, and that assistance will be useful to him, or whenever the damages demanded exceed five hundred dollars, he shall summon, to sit with him on the hearing of the case, not less than two nor more than three citizens of the United States, if such are residing at the port, who shall be taken from a list which had previously been submitted to and approved by the minister, and shall be of good

repute and competent for the duty. Every such associate shall note upon the record his opinion, and also, in case he dissents from the consul, such reasons therefor as he thinks proper to assign ; but the consul shall give judgment in the case. If the consul and his associates concur in opinion, the judgment shall be final. If any of the associates differ in opinion from the consul, either party may appeal to the minister, under such regulations as may exist ; but if no appeal is lawfully claimed, the decision of the consul shall be final.

Section 4108.—The jurisdiction allowed by treaty to the ministers, respectively, in the countries named in section 4083 shall be exercised by them in those countries, respectively, wherever they may be.

Section 4109.—The jurisdiction of such ministers in all matters of civil redress, or of crimes, except in capital cases for murder or insurrection against the governments of such countries, respectively, or for offences against the public peace amounting to felony under the laws of the United States, shall be appellate only : Provided, That in cases where a consular officer is interested, either as party or witness, such minister shall have original jurisdiction.

Section 4110.—All such officers shall be responsible for their conduct to the United States, and to the laws thereof, not only as diplomatic or consular officers, but as judicial officers, when they perform judicial duties, and shall be held liable for all negligence and misconduct as public officers.

Section 4111.—The President is authorised to appoint marshals for such of the consular courts in those countries as he may think proper, not to exceed seven in number, namely : one in Japan, four in China, one in Siam, and one in Turkey, each of whom shall receive a salary of one thousand dollars a year, in addition to the fees allowed by the regulations of the ministers, respectively, in those countries.

[Sections 4112-4116 relate to the duties of the marshals.]

Section 4117.—In order to organise and carry into effect the system of jurisprudence demanded by such treaties, respectively, the ministers, with the advice of the several consuls in each of the countries, respectively, or of so many of them as can be conveniently assembled, shall prescribe the forms of all processes to be issued by any of the consuls ; the mode of executing and the time of returning the same ; the manner in which trials shall be conducted, and how the records thereof shall be kept ; the form of oaths for Christian witnesses, and the mode of examining all other witnesses ; the costs to be allowed to the prevailing party, and the fees to be paid for judicial services ; the manner in which all officers and agents to execute process, and to carry this Title into effect, shall be appointed and compensated ; the form of bail-bonds, and the security which shall be required of the party who appeals from the decision of the consul ; and shall make all such further decrees and regulations from time to time, under the provisions of this Title, as the exigency may demand.

Section 4118.—All such regulations, decrees, and orders shall be

plainly drawn up in writing, and submitted, as hereinbefore provided, for the advice of the consuls, or as many of them as can be consulted without prejudicial delay or inconvenience, and such consul shall signify his assent or dissent in writing, with his name subscribed thereto. After taking such advice, and considering the same, the minister in each of those countries may, nevertheless, by causing the decree, order, or regulation to be published with his signature thereto, and the opinions of his advisers inscribed thereon, make it binding and obligatory, until annulled or modified by Congress; and it shall take effect from the publication or any subsequent day thereto named in the Act.

Section 4119.—All such regulations, orders, and decrees shall, as speedily as may be after publication, be transmitted by the ministers, with the opinions of their advisers, as drawn up by them severally, to the Secretary of State, to be laid before Congress for revision.

Section 4120.—It shall be the duty of the minister in each of those countries to establish a tariff of fees for judicial services, which shall be paid by such parties, and to such persons, as the minister shall direct; and the proceeds shall, as far as is necessary, be applied to defray the expenses incident to the execution of this Title; and regular accounts, both of receipts and expenditures, shall be kept by the minister and consuls and transmitted annually to the Secretary of State.

APPENDIX LXI

ACT ESTABLISHING THE UNITED STATES COURT FOR CHINA

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court is hereby established, to be called the United States Court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States consuls and ministers by law and by virtue of treaties between the United States and China, except in so far as the said jurisdiction is qualified by section 2 of this Act. The said court shall hold sessions at Shanghai, China, and shall also hold sessions at the cities of Canton, Tientsin, and Hankau at stated periods, the dates of such sessions at each city to be announced in such manner as the court shall direct, and a session of the court shall be held in each of these cities at least once annually. It shall be within the power of the judge, upon due notice to the parties in litigation, to open and hold court for the hearing of a special cause at any place permitted by the treaties, and where there is a United States consulate, when, in his judgment, it shall be required by the convenience of witnesses, or by some public interest. The place of sitting of the court shall be in the United States consulate at each of the cities respectively.

That the seal of the said United States Court for China shall be the arms of the United States, engraved on a circular piece of steel of the size of a half dollar, with these words on the margin : " The Seal of the United States Court for China."

The seal of said court shall be provided at the expense of the United States.

All writs and processes issuing from the said court, and all transcripts, records, copies, jurats, acknowledgments, and other papers requiring certification or to be under seal, may be authenticated by said seal, and shall be signed by the clerk of said court. All processes issued from the said court shall bear test from the day of such issue.

Section 2.—The consuls of the United States in the cities of China to which they are respectively accredited shall have the same jurisdiction as they now possess in civil cases where the sum or value of the property involved in the controversy does not exceed five hundred dollars United States money and in criminal cases where the punishment for the offence charged can not exceed by law one hundred dollars' fine or sixty days' imprisonment, or both, and shall have power to arrest, examine, and discharge accused persons or commit them to the said court. From all final judgments of the consular court either party shall have the right of appeal to the United States Court for China : *Provided, also*, That appeal may be taken to the United States Court for China from any final judgment of the consular courts of the United States in Korea so long as the rights of extraterritoriality shall obtain in favour of the United States. The said United States Court for China shall have and exercise supervisory control over the discharge by consuls and vice-consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China. Within sixty days after the death in China of any citizen of the United States, or any citizen of any territory belonging to the United States, the consul or vice-consul whose duty it becomes to take possession of the effects of such deceased person under the laws of the United States shall file with the clerk of said court a sworn inventory of such effects, and shall as additional effects come from time to time into his possession immediately file a supplemental inventory or inventories of the same. He shall also file with the clerk of said court within said sixty days a schedule under oath of the debts of said decedent, so far as known, and a schedule or statement of all additional debts thereafter discovered. Such consul or vice-consul shall pay no claims against the estate without the written approval of the judge of said court, nor shall he make sale of any of the assets of said estate without first reporting the same to said judge and obtaining a written approval of said sale, and he shall likewise within ten days after any such sale report the fact of such sale to said court, and the amount derived therefrom. The said judge shall have power to require at any time reports from consuls or vice-consuls in respect of all their acts and doings relating to the estate of any such deceased person. The said court shall have power to require where it may be necessary a special

bond for the faithful performance of his duty to be given by any consul or vice-consul into whose possession the estate of any such deceased citizen shall have come in such amount and with such sureties as may be deemed necessary, and for failure to give such bond when required, or for failure to properly perform his duties in the premises, the court may appoint some other person to take charge of said estate, such person having at first given bond as aforesaid. A record shall be kept by the clerk of said court of all proceedings in respect of any such estate under the provisions hereof.

Section 3.—That appeals shall lie from all final judgments or decrees of said court to the United States circuit court of appeals of the ninth judicial circuit, and thence appeals and writs of error may be taken from the judgments or decrees of the said circuit court of appeals to the Supreme Court of the United States in the same class of cases as those in which appeals and writs of error are permitted to judgments of said court of appeals in cases coming from district and circuit courts of the United States. Said appeals or writs of error shall be regulated by the procedure governing appeals within the United States from the district courts to the circuit courts of appeal, and from the circuit courts of appeal to the Supreme Court of the United States, respectively, so far as the same shall be applicable; and said courts are hereby empowered to hear and determine appeals and writs of error so taken.

Section 4.—The jurisdiction of said United States court, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with said treaties and the laws of the United States now in force in reference to the American consular courts in China, and all judgments and decisions of said consular courts, and all decisions, judgments, and decrees of said United States court shall be enforced in accordance with said treaties and laws. But in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States shall be applied by said court in its decisions and shall govern the same subject to the terms of any treaties between the United States and China.

Section 5.—That the procedure of the said court shall be in accordance, so far as practicable, with the existing procedure prescribed for consular courts in China in accordance with the Revised Statutes of the United States: *Provided, however,* That the judge of the said United States court for China shall have authority from time to time, to modify and supplement said rules of procedure. The provisions of sections 4106 and 4107 of the Revised Statutes of the United States allowing consuls in certain cases to summon associates shall have no application to said court.

Section 6.—There shall be a district attorney, a marshal, and a clerk of said court, with authority possessed by the corresponding officers of the district courts in the United States as far as may be con-

sistent with the conditions of the laws of the United States and said treaties. The judge of said court and the district attorney, who shall be lawyers of good standing and experience, marshal, and clerk shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive as salary, respectively, the sums of eight thousand dollars per annum for said judge, four thousand dollars per annum for said district attorney, three thousand dollars per annum for said marshal, and three thousand dollars per annum for said clerk. The judge of the said court and the district attorney shall, when the sessions of the court are held at other cities than Shanghai, receive in addition to their salaries their necessary expenses during such sessions not to exceed ten dollars per day for the judge and five dollars per day for the district attorney.

Section 7.—The tenure of office of the judge of said court shall be ten years, unless sooner removed by the President for cause ; the tenure of office of the other officials of the court shall be at the pleasure of the President.

Section 8.—The marshal and the clerk of said court shall be required to furnish bond for the faithful performance of their duties, in sums and with sureties to be fixed and approved by the judge of the court. They shall each appoint, with the written approval of said judge, deputies at Canton and Tientsin, who shall also be required to furnish bonds for the faithful performance of their duties, which bonds shall be subject, both as to form and sufficiency of the sureties, to the approval of the said judge. Such deputies shall receive compensation at the rate of five dollars for each day the sessions of the court are held at their respective cities. The office of marshal in China now existing in pursuance of section 4111 of the Revised Statutes is hereby abolished.

Section 9.—The tariff of fees of said officers of the court shall be the same as the tariff already fixed for the consular courts in China, subject to amendment from time to time by order of the President, and all fees taxed and received shall be paid into the Treasury of the United States.

Approved, June 30, 1906.

MacMurray (Appendix D) adds the following note :

In reference to the effect of the Act establishing the United States Court for China upon previous legislation regarding the exercise of extraterritorial jurisdiction by American Consular Officers acting under regulations and rules of procedure prescribed by the American Minister, the Department of State had occasion to instruct the Legation at Peking, under the date of March 2, 1917, as follows :

“ You are informed that in the opinion of the Department, the provisions of Sections 4106 and 4107 of the Revised Statutes, giving authority to the Minister to approve the list of associates summoned by consuls to sit with them in the trial of certain cases, are not abrogated

by later legislation, including the Act of Congress of June 30, 1906, creating the United States Court for China and prescribing the jurisdiction thereof.

“ With respect to the provisions of the Statutes giving authority to the Minister to make regulations regarding the rules of procedure applicable to the consular courts, you are advised that the Department is clearly of the opinion that Section 5 of the Act of June 30, 1906, should be construed as effecting a transfer of the authority to modify and supplement existing rules of procedure from the Minister to the United States Court for China.

“ You are further informed that the Department considers that the power conferred upon the Minister by Section 4086 of the Revised Statutes, to make regulations concerning remedial rights, is not revoked or transferred by the provisions of the Act creating the United States Court or by other legislation. However, in view of the fact that, according to the Department's information, under the holdings and decisions of the United States Court for China in construction of the authority vested in it and in the consular courts, American citizens in China are supplied with remedial rights to an extent apparently quite ample and in view also of the narrow construction which has heretofore been placed upon the authority of the Minister, derived from the provisions of Section 4086 of the Revised Statutes, with respect to the making of regulations concerning remedial rights, it would seem that there would be little, if any, occasion for the Minister to exercise such authority.”

BIBLIOGRAPHY

ANDERSON, JOHN.—*English Intercourse with Siam in the Seventeenth Century*. London : Kegan Paul, 1890.

AUBER, PETER.—*China : an Outline of its Government, Laws, and Policy*. London : Parbury, Allen & Co., 1834.

BEWES, W. A.—*The Romance of the Law Merchant*. London : Sweet & Maxwell, 1923.

BLAND, J. O. P., and BACKHOUSE, E.—*Annals and Memoirs of the Court of Peking*. London : W. Heinemann, 1913.

BOULAIS, GUY.—*Manuel du Code Chinois* (Variétés Sinologiques No. 55). Shanghai : Imprimerie de la Mission Catholique, 1924.

BRITISH BLUE BOOKS (cited by their appropriate titles, in chronological order) :

1. *Correspondence Relating to China*, 1840.
2. *Report of the Select Committee appointed to take into Consideration the Present State of our Commercial Relations with China*, 1847.
3. *Correspondence Relating to Operations in the Canton River*, 1847.
4. *Correspondence Relating to the Murder of Six Englishmen*, 1848.
5. *Correspondence Relating to Emigration from China*, 1853.
6. *Papers Relating to the Proceedings of H.M. Naval Forces at Canton*, 1857.
7. *Correspondence Relating to Insults in China*, 1857.
8. *Further Papers Relating to the Rebellion in China*, 1863.
9. *Correspondence Relating to the Revision of the Treaty of Tientsin*, 1868.
10. *Further Memorials Respecting the Chinese Revision Convention*, 1870.
11. *Report on the Mixed Court at Shanghai*, 1881.
12. *Report of the Extraterritoriality Commission*, 1926.

China Materials, Diary, and Consultations, 1637–1834 (unpublished, and in the possession of the India Office).

China Year Book, 1920–1927. London : Routledge.

Chinese Maritime Customs Treaties. See *Treaties*.

Chinese Repository, The (twenty-one volumes, published at Canton from 1832 to 1851).

COOKE, G. W.—*China and Lower Bengal*. Fifth Edition. London : Routledge, Warne, & Routledge, 1861.

DAS GUPTA, J. N.—*India in the Seventeenth Century*. Calcutta University Press, 1916.

DAVIS, Sir J. F.—*Sketches of China*. 2 vols. London : Charles Knight, 1841.

DENNETT, TYLER.—*The Americans in Eastern Asia*. New York : Macmillan, 1922.

- ELLIS, Sir H.—*Journal of the Proceedings of the Late Embassy to China*. First Edition. London : John Murray, 1817.
- HAKLUYT.—*Principal Navigations of the English Nation*. Vol. III. Edited by E. Goldsmid. Edinburgh, 1885-90.
- HALL, W. E.—*International Law*. Eighth Edition. Edited by Professor A. Pearce Higgins. Oxford : Clarendon Press, 1924. *The Foreign Jurisdiction of the British Crown*. Oxford : Clarendon Press, 1894.
- HANSARD.—*Parliamentary Debates*. Third Series. Vol. XVIII.
- HART, Sir R.—*These from the Land of Sinim*. London : Chapman & Hall, 1901.
- HERSHEY, A. S.—*International Law during the Russo-Japanese War*. New York : Macmillan, 1906.
- HINCKLEY, F. E.—*American Consular Jurisdiction in the Orient*. Washington : Lowdermilk & Co., 1906.
- HIRTH, F.—*China and the Roman Orient*. Shanghai : Kelly & Walsh, 1885.
- HOLLAND, Sir T. E.—*Jurisprudence*. Thirteenth Edition. Oxford : Clarendon Press, 1924.
- HUNTER, WILLIAM C.—*The Fan-Kwae at Canton before Treaty Days*. Shanghai : Kelly & Walsh, 1911. *Bits of Old China*. Shanghai : Kelly & Walsh, 1911.
- KOO, WELLINGTON.—*The Status of Aliens in China*. New York : Columbia University Press, 1912.
- KOTENEV, A. M.—*Shanghai : Its Mixed Court and Council*. Shanghai : North China Daily News, 1925. *Shanghai : Its Municipality and the Chinese*. Shanghai : North China Daily News, 1927.
- LANNING, G., and COULING, S. C.—*The History of Shanghai*. Shanghai : Kelly & Walsh, 1922.
- LI UNG BING.—*An Outline of Chinese History*. Shanghai : The Commercial Press, 1914.
- McMURRAY, J. V. A.—*Treaties and Agreements with and concerning China, 1894-1919*. 2 vols. Washington : Carnegie Endowment, 1921.
- McNAIR, H. F.—*The Chinese Abroad*. Shanghai : The Commercial Press, 1924. *Memorandum No. 13 of the Tientsin British Committee of Information* (October 21, 1926).
- MILBURN, WILLIAM.—*Oriental Commerce*. 2 vols. London : Black, Parry & Co., 1813.
- MOORE, J. B.—*Digest of International Law*. Washington : Government Printing Office, 1926.
- MORANT, G. SOULIÉ DE.—*Extraterritorialité et Intérêts Etrangers en Chine*. Paris : Paul Geuthner, 1925.
- MORSE, H. B.—*The International Relations of the Chinese Empire*. 3 vols. Shanghai : Kelly & Walsh, 1910 and 1918. *The Chronicles of the East India Company Trading to China*. 4 vols. Oxford : Clarendon Press, 1926.
- MUIRHEAD, J.—*Historical Introduction to the Private Law of Rome*. Third Edition. London : A. & C. Black, 1916.
- MURDOCH, JAMES.—*A History of Japan*. 3 vols. Kobe & London, 1925-26.
- NEWBOLD, T. J.—*The British Settlements in the Straits of Malacca*. 2 vols. London : John Murray, 1839.

NORTON-KYSHE, J. W.—*The History of the Laws and Courts of Hong Kong*. 2 vols. London: Fisher Unwin, 1898.

OPPENHEIM, L.—*International Law*. Fourth Edition. Edited by Dr. A. D. McNair. 2 vols. London: Longmans, Green & Co., 1926 and 1928.

Periodicals:

1. *American Journal of International Law, The*. Vol. XVI.
2. *China Mail, The*. November 26, 1846; December 11, 1856. (Hong Kong.)
3. *China Weekly Review, The*. June 19, 1926. (Shanghai.)
4. *Chinese Social and Political Science Review, The*. Vols. X, XI and XII. 1926-8. (Peking.)
5. *Hong Kong Daily Press, The*. 1924-7. (Hong Kong.)
6. *Hong Kong Telegraph, The*. 1924-7. (Hong Kong.)
7. *Hong Kong University Law Journal, The*. Vol. I. (1926-7.)
8. *Journal of Comparative Legislation, The*. Third Series. Vol. VIII.
9. *Journal of the Siam Society, The*. Vol. XIV.
10. *Law Quarterly Review, The*. Vols. XLI-XLIII.
11. *Nineteenth Century and After, The*. Vol. XCIX.
12. *North China Herald, The*. 1865-1928. (Shanghai.)
13. *Pall Mall Budget, The*. July 17, 1880. (London.)
14. *Peking and Tientsin Times, The*. 1922-4. (Peking.)
15. *Shanghai Municipal Gazette, The*. Feb. 18, 1927. (Shanghai.)
16. *South China Morning Post, The*. 1924-7. (Hong Kong.)
17. *Statesman, The*. April 7, 1927. (Calcutta.)
18. *Times, The*. July 13, 1863; 1865; 1924-8. (London.)

PHILLIPSON, COLEMAN.—*International Law and Custom of Ancient Greece and Rome*. 2 vols. London: Macmillan, 1911.

PIGGOTT, Sir F.—*Extraterritoriality*. Revised Edition. Shanghai: Kelly & Walsh, 1907.

POUND, ROSCOE.—*An Introduction to the Philosophy of Law*. New York, 1922.

Publications of the Chinese Commission on Extraterritoriality (in order of publication):

1. *Laws, etc., Relating to Traders and Commerce*. Peking, 1922.
2. *The Provisional Criminal Code of China*. Peking, 1923.
3. *The Regulations Relating to the Criminal Procedure of China*. Peking, 1923.
4. *Chinese Prisons*. Peking, 1923.
5. *The Chinese Supreme Court Decisions*. Peking, 1923.
6. *The Regulations Relating to the Civil Procedure of China*. Peking, 1923.
7. *Laws, etc., Relating to the Judicial Administration of China*. Peking, 1923.
8. *The Trade Mark Law*. Peking, 1923.
9. *The Constitution, etc., of China*. Peking, 1924.

Report of the Hong Kong General Chamber of Commerce, 1925.

RYMER.—*Foedera*. Second Edition. London, 1726-35.

SCOFIELD, C. L.—*The Life and Reign of King Edward the Fourth*. 2 vols. London: Longmans, Green & Co., 1923.

SHIH SHUN LIU.—*Extraterritoriality: Its Rise and Decline*. New York: Columbia University Press, 1925.

- STAUNTON, Sir G. L. (the elder).—*The Journal of the Macartney Embassy*. London : W. Bulmer for G. Nicol, 1797.
- STAUNTON, Sir G. T. (the younger).—*Ta T'sing Lü Li, or Penal Code of the Chinese Empire*. London : Cadell & Davies, 1810. *Miscellaneous Notices Respecting China*. Second Edition, 1822 ; revised 1850. London : John Murray.
- STUBBS, W.—*Select Charters*. Third Edition. Oxford : Clarendon Press, 1876.
- TAKAHASHI.—*International Law during the Chino-Japanese War*. Cambridge University Press, 1899.
- TARRING.—*British Consular Jurisdiction in the East*. London : Stevens & Haynes, 1887.
- Treaties, Conventions, etc., between China and Foreign States*. 2 vols. Shanghai : Chinese Maritime Customs. Second Edition. 1917.
- TWISS, Sir TRAVERS.—*The Law of Nations*. Second Edition. Oxford : Clarendon Press, 1884.
- URMSTON, Sir J. B.—*Observations on the China Trade*. London, 1834.
- VATTEL.—*The Law of Nations*. Translated by Joseph Chitty. London : John Murray, 1834.
- WILLIAMS, S. WELLS.—*The Middle Kingdom*. 2 vols. New York : Scribners, 1907.
- WILLOUGHBY, W. W.—*Foreign Rights and Interests in China*. 2 vols. Second Edition. Baltimore : The John Hopkins Press, 1927.

INDEX

- ABERDEEN, Earl of: and consular jurisdiction, i. 174; letter of, i. 188; replaces Palmerston, 1841, i. 249; supports Sir H. Pottinger, i. 253
 Acheen, extraterritoriality at, 1602, i. 81
 Adamson, Captain, of the *Winchelsea*, i. 57
 Administrative Court, Chinese, ii. 35, 41, 42
Admiral Pocock, the, attacked at Turon Bay, 1765, i. 36, 37
 Adulterers, slaughter of, in Chinese law, i. 111
 Affrays in Chinese law, i. 112 (for affrays involving foreigners, *see under* appropriate headings)
Agincourt, H.M.S., Mr. Hulme accused of drunkenness on, i. 226
Agnes, the, at Ningpo, 1862, i. 316
 Ai Ming Chen, case of, ii. 58
 Alabaster, Sir Chaloner: and redress by Chinese, i. 327; and Mixed Court, i. 349, 350; transferred to Canton, i. 358
 d'Albuquerque, i. 3
 Alcock, Sir Rutherford: refuses to admit counsel in consular courts, i. 233, 240; and Chinese British subjects, i. 246; letter to Sir J. F. Davis, i. 252; inquiry at Foochow, 1846, i. 257; and attack on missionaries, 1848, i. 265, 266; and enforcement of Chinese law, i. 268, 269; Treaty of Tientsin, i. 319; and Chinese vessels flying British flag, i. 330; view of bankruptcy, i. 332; despatch to Earl of Clarendon, 1869, i. 335, 336; and inland residence, i. 340; proposals of, i. 341; and Chinese law, ii. 369
 Algiers, extraterritoriality in, i. 168
 Aliens, status of, ii. 155
 Allen, Mr. Clement, British Consul at Shanghai, i. 361, 362
 Allen, tried for theft, 1837, i. 71
 Amaral, Governor of Macao, murdered 1849, ii. 291
 American Consul: at Canton, 1805, i. 49; at Chinese trial, 1817, i. 55; and affray at Hong Kong, 1839, i. 151; erects flagstaff at Canton, 1844, i. 178; hoists flag at Shanghai, i. 344
 American Consul-General at Shanghai objects to Mixed Court Rules, i. 381
 American Consuls, jurisdiction of, i. 322
 American law in China, ii. 126, 127 *et sqq.*
 American Supreme Court for China, i. 322
 American vessels, search of, by British, i. 49
 Amherst Embassy, i. 20 *et sqq.*; bears flags of tribute-bearers, i. 23; insulted, i. 24, 25; failure of, i. 25, i. 137
 Amoy: English at, 1683, i. 5; Company attempt to establish factory at, 1685, i. 28; Tartar wounded at, i. 28; Customs house entered by British sailor, 1687, i. 29; incident at, 1844, i. 251; riots at, 1852, i. 271, 272; British merchants at, i. 320; International Mixed Court at, i. 404, 405
 Anderson, Mr., i. 140
 Andrade, Fernão Perez de, i. 3
 Andrade, Simon de, i. 3
 Anglo-Chinese War, first, i. 166; and other Powers, i. 177; and extraterritoriality, i. 288
 Anthon, J. C., deposition of, 1844, i. 182
 Arabs, trade with China, i. 10, 90
 Arbitration, promotion of, in China, i. 197, ii. 118
 Armed robberies at Shanghai, 1927, i. 397
Arrow, lorcha, i. 277 *et sqq.*; Sir John Bowring and, ii. 310 *et sqq.*

- Askold*, the, case of, 1904, ii. 144
 Assessors : in British consular courts, i. 195, 196, 197 ; Russian attempt to restore in Manchuria, 1926, i. 289 ; foreign, at Chinese trials, ii. 76, 77
 Astell, J. H. K., secretary to Lord Napier, 1834, i. 140 ; insulted at Canton, i. 141
 Auber, Peter, view of Chinese law, i. 43
Austen, attempted murder by sea-cunny of, 1834, i. 69
 Austrian subjects, status of, at Shanghai, 1917, i. 382, 383
 Ayuthia, factory at, i. 82
- BAIKOFF, i. 89
 Baker, Captain : wife of, assaulted, 1829, i. 63 ; assaults Loureiro, i. 63 ; imprisoned at Macao, i. 64
 Balkans, extraterritoriality in, ii. 168
 Bankruptcies, Chinese, i. 249
 Bankruptcy, decisions respecting, i. 244
 Bar Association, American, at Shanghai, proposals of, i. 388
 Baty, Dr., view of Extraterritoriality, ii. 94 *et sqq.*
 Bayard, Mr., American Secretary of State, i. 239, 240 ; attitude to opium, ii. 136
 Beale, Thomas, death of, ii. 251, 252
 Belgium : trade with China, i. 6 ; attempt to negotiate treaty with China, 1845, i. 148 ; Treaty of Peking, 1765, i. 292 *et sqq.*
Belvedere, the : theft from crew, 1787, i. 43 ; mutiny on, 1787, i. 44
Bilbaino, the, burned by Chinese, 1839, i. 161, 163
 Bills of Sale, British, in China, ii. 122, 123
Blackburn, the, at Ningpo, 1862, i. 316
Black Joke, the, pirated, 1839, i. 157, 158
 Blaine, Mr., American Secretary of State, ii. 131
 Bogue, Supplementary Treaty of, 1843, i. 175, 176, 276, 280 ; Chinese version of, i. 175, 176, 177
 Bonham, Sir George, Governor of Hong Kong and Superintendent of Trade : despatch to, 1851, i. 193 ; interviews Hsu, 1848, i. 267 ; and punishment of Chinese, i. 268 ; and attack on Mr. Meadows, 1848, i. 269, 270
Bonitta, the, i. 30
 Borneo, extraterritoriality in, ii. 167
 Bourne, N. F., deposition of, 1844, i. 182
 Bowman, Mr., attack on, 1848, i. 267
 Bowring, Sir John, Governor of Hong Kong and Superintendent of Trade : attitude to Consular Courts, i. 233 ; and British marriages in China, i. 235 ; attack on missionaries, 1852, i. 271 ; and Mr. Seth, 1854, i. 273 ; *lorcha Arrow*, i. 280, ii. 310 *et sqq.*
 Boxer Rebellion, ii. 12
 Bremen, trade with China, i. 6
 Bribery in China, i. 99, 118
 Bridgeman, Dr., founder of *The Chinese Repository*, i. 97 ; view of Chinese law, i. 105 *et sqq.*
 Bridgman, Mr., ineffective negotiation with Lin Tse-su, 1839, i. 160
 Brigandage : Russian, in China, i. 93, 94 ; Chinese, in Russia, i. 93, 94, ii. 21
 British Consul : jurisdiction of, at the Five Ports, i. 174 ; powers of, i. 191, 193 ; powers at Shanghai, i. 345
 British Consular Agent, powers of, i. 192
 British Court for China (est. 1833), i. 147, 148, 149, 201, ii. 273 *et sqq.* ; transferred to Hong Kong, 1843, i. 201
 British merchants : and Compton case, i. 215, 217 ; and Foreign Inspectorate of Customs, i. 315, 316
 British nationality, loss of, in China, ii. 106
 British subject : within jurisdiction of Courts of Hong Kong, i. 189, 190 ; status of, in China, i. 194 ; government of, in China, i. 194 ; offences of, in China, i. 195 ; violation of treaties by, i. 196 ; of Chinese race, i. 246, 247 ; in service of Chinese Government, status of, i. 236, 237, 238, ii. 298 *et sqq.* ; definition of, i. 304, ii. 105 ; registration of, ii. 125
 British Supreme Court for China (est. 1865), ii. 107 *et sqq.* ; appellate jurisdiction of, i. 322
 British traders under other flags, i. 6
 Browne, Mr. Henry, theft of boat belonging to, 1786, i. 43
 Bruce, Sir F. : British Minister to China, 1859, i. 235 ; and treaties with China, i. 329 ; and British subjects in Chinese service, ii. 301, 302, 303

- Buchanan, Captain, of the *Neptune*, i. 50, ii. 182
- Buckley, John, executed, 1864, i. 324
- Buddha shops, i. 360
- Bulgaria, subjects of, in China, i. 305
- Burgevine, General, case of, 1864, i. 238, 239
- Burma, war between China and, 1765, i. 73
- Burma Frontier Convention, 1894, ii. 356
- Burne, Edward, killed by Defado, i. 49, 50
- Burne, Rev. W. C., arrest of, 1856, i. 273, 274
- Burneby, agent of East India Company, i. 82
- Burney, Colonel, i. 72
- CADET at Mixed Court, 1905, i. 397
- Cadogan*, the, i. 30
- Caine, Major, Chief Magistrate of Hong Kong, i. 201; no confidence in his decisions, i. 204; Compton case, i. 226
- Caine, G. W., convicted for embezzlement, i. 240
- Caledonia*, the, i. 62
- Cameron, case of, 1894, ii. 142
- Cameroons, subjects of, in China, i. 305
- Campbell, Mr., acting Chief Justice, Hong Kong, 1847, i. 227
- Cangue, the, i. 362
- Canton: Dutch attempt to trade at, i. 4; Russia attempts to trade at, i. 5; Weddell at, 1637, i. 5; remains open to trade, 1757, i. 5; relations at, i. 6; brawls at, i. 6; taxation at, i. 6, 7; regulations at, i. 8, 9; factories at, i. 9, 10; burdens on trade at, i. 14; civil jurisdiction at, i. 74, 75; impossible to establish Russian extraterritorial system at, i. 91; East India Company secures agreement at, i. 96; arrival of Lord Napier at, 1834, i. 140; resolutions on conditions at, 1833, i. 143; riot at, 1844, i. 178; hostility of people of, to Americans, 1844, i. 180; character of population, i. 181; riot at, 1846, i. 208 *et seq.*; affray at, 1842, i. 253; right of residence at, abandoned, 1845, i. 256; executions at, 1846-7, i. 260; disturbances at, i. 269; incendiary placards at, 1856, i. 273; Treaty of, 1847, ii. 308 *et seq.*
- Canton Hospital, case of, ii. 62, 63
- Canton Government, i. 384; and Extraterritoriality Commission, ii. 7; and Hong Kong boycott, ii. 61
- Canton Register*, the, on Chinese prisons, 1828, i. 128
- Cantonese: at Foochow, 1846, i. 257; xenophobia of, i. 262; character of, i. 181, 289
- Capitulations, the, ii. 164 *et seq.*, 168
- Caracalla, ii. 158
- Carta Mercatoria*, ii. 161
- Castlereagh, Lord, letter of instructions, 1816, i. 20, 21, 22
- Chamber of Commerce: Hong Kong, and Treaty of Tientsin, i. 319; Shanghai, and Treaty of Tientsin, i. 317, 318, 328; and Mixed Court, 1925, i. 391, 392
- Chambers of Commerce, Chinese law of, ii. 28, 29
- Chang Chih, case of, ii. 54
- Changsha, massacre at, ii. 65
- Chapdelaine, Auguste, murder of, 1854, i. 274, 285, 336
- Charles Forbes*, the, and death of a Chinese, 1826, i. 62
- Charles Grant*, the, thefts from, 1814, i. 55
- Chefoo: robbery at, 1869, i. 304; memorial of British merchants at, i. 332; internment of Russian warships at, 1904-5, ii. 144, 145
- Chefoo Convention, 1876, i. 340, 341, 359, 360, ii. 77, 96, 97, 356, 369
- Chekiang, Governor of, and Chinese in British service, i. 251, 252
- Chen Shen-wu, case of, ii. 55
- Chesney, Lieutenant-Colonel, attack on, 1847, i. 260, 261
- Chientao: status of Koreans in, i. 302; Japanese consular officers in, ii. 338
- Chientao Agreement, 1909, ii. 337, 338
- Chile: trade with China, i. 6; subjects of, in China, i. 305
- China: Western intercourse with, i. 1 *et seq.*; Westernisation of, i. 2; law reform in, i. 2; early intercourse with, i. 3; no recognition of importance of commerce by, i. 4; attitude to massacre of Chinese, 1603, i. 4; Russian embassies, i. 5, 15, 91; opening of ports to trade, 1685, i. 5, 10; closing of ports, i. 5, 10; high rate of interest in, i. 8; view of political system, i. 10, 11; claim to universal overlordship, i. 12, 103, 105, 141; not a member of

- Family of Nations, i. 12 ; embassy from Pope, i. 15 ; protest on British occupation of Macao, i. 20 ; jurisdiction over foreigners resisted, i. 27 *et seq.* ; war with Burma, i. 72 *et seq.* ; attitude to bankruptcy, i. 74 *et seq.* ; treaties with Russia, 1689-1851, i. 88 *et seq.* ; attempt to suppress opium traffic, i. 144 *et seq.*, 170 *et seq.*, ii. 134 *et seq.* ; Treaty of Nanking, i. 173 *et seq.* ; Treaty of Wanghia, i. 187 ; Treaty of Whampoa, i. 187 ; cession of Hong Kong, i. 201 ; and Compton case, i. 209 *et seq.* ; protection of foreigners, i. 249 *et seq.* ; exclusiveness of, i. 250 ; *Arrow* question, i. 276 *et seq.* ; Treaty of Tientsin, i. 284 *et seq.* ; dislike of *protégé* system, i. 303, 304, 305 ; customs jurisdiction of, i. 308 *et seq.* ; Chinese in foreign concessions, i. 321, 322 ; attitude to extraterritoriality, i. 324 *et seq.*, 339 ; inland residence, i. 340 ; mixed cases, 1876, i. 340, 341 ; law reform rejected, i. 342 ; and Conference of Ministers, 1879, i. 342 ; opening of ports, 1842, i. 344 ; Taiping Rebellion, i. 345 ; *Su-Pao* newspaper case, i. 365 ; abolition of corporal punishment, i. 373 ; Revolution, 1911, i. 375 ; and Mixed Court, i. 378 ; Declaration of War on Germany and Austria, 1917, i. 382 ; abolition of German and Austrian extraterritoriality, i. 383 ; of Russian extraterritoriality, i. 383 ; Peace Delegation, i. 386, 387, ii. 4, 5 ; rendition of Mixed Court demanded, 1925, i. 391, 392 ; rendition effected, i. 393 *et seq.* ; reform movement in, ii. 1 *et seq.* ; Washington Conference, ii. 5, 6 ; disorder in, ii. 7 ; and Extraterritoriality Commission, ii. 10 ; constitution of, ii. 11 *et seq.* ; Parliament, ii. 13 *et seq.* ; President, ii. 15 ; Provisional Government, 1924, ii. 16, 17 ; laws of, ii. 18 *et seq.* ; brigandage in, ii. 21 ; enforcement of law in, ii. 45 *et seq.* ; protection of industrial property in, ii. 131 *et seq.* ; neutrality of, in Russo-Japanese War, ii. 143 ; sovereignty of, and extraterritoriality, ii. 153, 154 ; despatch to Russia, 1729, ii. 225, 226, 227 ; treaties with, ii. 312 *et seq.* ; recent legislation, ii. 379 *et seq.*
- China Association, Shanghai Branch, i. 391
- China Inland Mission, property occupied, ii. 58, 65
- China Mail*, the : and Compton case, i. 221, 222 ; and *Arrow* case, i. 278, 279
- China Weekly Review*, the, and extraterritoriality, ii. 47 *et seq.*
- Chinese, the : contact with Portuguese, i. 3 ; massacre of, 1603, i. 4 ; crimes against foreigners, i. 250 *et seq.* ; protection of, by treaty Powers, ii. 151, 152
- Chinese Codes. *See* Chinese Law
- Chinese Eastern Railway Zone, jurisdiction in, ii. 353 *et seq.*
- Chinese Judiciary, proposed reform of, ii. 382 *et seq.*
- Chinese jurisdiction : resistance to, i. 7, 47 *et seq.*, 70, 147, 167 *et seq.* ; recognised by Americans, i. 49, 58 ; Portuguese resistance to, i. 62 ; possible withdrawal of assaults on foreigners from, i. 261
- Chinese Law :
- (1) *Ta Tsing Lü Li* : copy of, asked for, 1800, i. 46 ; translated by Staunton, 1810, i. 97, ii. 18, 24, 25, i. 74, 152, 241, 269, 270, 363 ; foreign opinion of, i. 96 *et seq.* ; abuses in, i. 97, 98 ; and foreigners, i. 101, 102 ; law of homicide and affrays, i. 109 *et seq.*, 146 ; Dr. Milne's view of, i. 169 ; defects of, i. 228 *et seq.* ; of wounding, i. 253, 254 ; extraterritoriality an inducement to reform, i. 250 ; uncertainty of, i. 263 ; Chinese unwilling to reform, i. 329 ; mode of publication at Shanghai, i. 374
- (2) *Modern Codes*, i. 243, ii. 2, 18 *et seq.* ; adopted by Canton Government, ii. 11 ; non-enforcement of, ii. 4, 45 *et seq.* ; Provisional Criminal Code, i. 380, 390, 397, ii. 3, 11, 18 *et seq.*, 135, 138 ; Code of Civil Law and Procedure, ii. 24 *et seq.*
- Chinese merchants, bankruptcy of, i. 8
- Chinese officials : functions of, i. 99 *et seq.* ; corruption of, i. 99 *et seq.*, 118, 121, 126, 309, ii. 228 *et seq.* ; employment of illegal tortures by, i. 131 *et seq.* ; connive at opium traffic, i. 171 ; attitude to foreigners, i. 250, 251
- Chinese Repository*, the : founded, 1832, i. 97 ; accounts of Chinese

- law in, i. 98 *et seq.*; and situation in 1833, i. 138; murder of Lin Wei-hi, 1839, i. 143 *et seq.*; affray at Hong Kong, 1839, i. 146, 147; and crisis of 1839, i. 164; article by American in, i. 167 *et seq.*; and position at Canton, 1847, i. 260; and Canton riot, 1846, i. 207, 208, 209
- Chinese Sovereignty, offences against, ii. 110
- Chin Kiang, memorial of British merchants at, i. 328
- Ching Liuh-tsai, Governor of Canton: fails to suppress riot, 1844, i. 178; states Chinese case, i. 179
- Chitty, Joseph, i. 204
- Chu Tieh-fu, case of, ii. 55
- Chuenpi, battle of, 1839, i. 165, 166, 172
- Chusan*, the, lorcha, i. 277
- Citizen*, the, crew of, attack Chinese, 1826, i. 63
- Civil cases, mixed, i. 249, 250
- Civil Code, Indian, ii. 92
- Civil War, Chinese, i. 381, 384, ii. 66; offence of intervention in, ii. 91
- Clarendon, Earl of: despatch to Sir George Bonham, 1851, i. 193; memorial to, i. 233; and coolie traffic, 1853, i. 272; and lorcha *Arrow*, i. 281; and objects of treaty revision, 1856, i. 283, 284
- Cochin-China, King of, and Amherst Embassy, i. 26
- Co-Hong: established, 1720, i. 7; reorganised, 1782, i. 8; monopoly of, i. 75; new members of, i. 76; joint liability of, i. 76, 77
- Co-Judges, proposed appointment of, i. 325
- Coley, Mr., counsel for Mr. Compton, i. 220
- College, Mr. T. R., i. 140
- Collins, Captain, assaulted, 1814, i. 55
- Commercial law: absence of, in China, i. 335, ii. 364 *et seq.*; growth of, at Mixed Court, i. 350, 351; modern, ii. 27, 28, 29
- Commercial Treaty: between United States and China, 1903, ii. 2, 359, 360, 361; between Great Britain and China, 1902, ii. 2, 357; between Japan and China, ii. 2, 336, 337
- Commission on Extraterritoriality, Chinese, ii. 14
- Communism in China, i. 397
- Companies: American, in China, ii. 127-130; British, in China, ii. 123, 124; Chinese, ii. 124, 125
- Compton case, i. 205 *et seq.*, 232, 258
- Concession, French, at Shanghai, i. 345
- Concessions: status of Chinese in, i. 306; jurisdiction over foreigners in, i. 321; jurisdiction over Chinese in, i. 321
- Conference of Ministers, 1879, i. 341, 342, 359
- Congo Free State: extraterritorial rights in China, i. 302; treaty with China, ii. 348
- Constitution, Chinese, ii. 11-18
- Consuls, British: powers of, in civil suits, i. 196, 197; grant of probate by, i. 199; legally uneducated, i. 241; power to arrange settlements, i. 249
- Consular Body at Shanghai: and Chilean treaty, i. 306; and Mixed Court, i. 346 *et seq.*
- Consular Courts, British: foreign witnesses in, i. 149, 326, ii. 147; counsel in, i. 232, 233; foreign litigants in, ii. 149; inaccessibility of, ii. 149, 150
- Consular Jurisdiction: extension of, 1858, i. 284; exercise of, i. 322 *et seq.* (a) British, i. 195, 196, ii. 77, 78, 104 *et seq.*; limits after 1842, i. 188, 190, 191, ii. 285 *et seq.* (b) United States, ii. 78, 79, 80, 126 *et seq.*; statutes relating to, ii. 388 *et seq.* (c) Belgian, ii. 82. (d) Danish, ii. 82, 83. (e) Dutch, ii. 86, 87. (f) French, ii. 80, 81; (g) Italian, ii. 83, 84. (h) Japanese, ii. 85, 86. (i) Norwegian, ii. 87, 88. (j) Portuguese, ii. 88, 89. (k) Spanish, ii. 89. (l) Swedish, ii. 89, 90
- Consular officers, British subordinate, i. 198
- Contracts: concerning real property in China, i. 234, 235; Russian mercantile, i. 288
- Converts, Chinese, position of, i. 337
- Coolie traffic, i. 271, 272, 273
- Copenhagen, Danish appeals carried to, i. 324
- Copyright law, Chinese, ii. 132
- Coqua, i. 38
- Cornabé, action of, at Amoy, 1852, i. 270, 271
- Corporal punishment, Imperial edict on, 1905, i. 373
- Corporation, Chinese theory of, ii. 28
- Couling and Lanning, view of Chinese law, i. 121, 122
- Court of Appeal for China and Japan, proposals for, i. 245, ii. 304 *et seq.*

- Court of Consuls: jurisdiction of, i. 346; rules of procedure, ii. 377, 378, 379
- Cowpland, Captain, ii. 184, 196, 197
- Criminal Procedure, Indian Code of, ii. 91
- Crown: power to legislate for China, i. 188, 189; basis of jurisdiction in China, i. 195
- Cruickshanks, Captain, wife of, assaulted, 1823, i. 62
- Crusades, ii. 164
- Cuddalore*, the, seamen from, imprisoned at Macao, 1760, i. 35
- Cushing, Hon. Caleb, American Minister to China, 1844, i. 178; and death of Hsü A-man, i. 170; negotiates with Kiyung, i. 179 *et sqq.*; and basis of extraterritoriality in China, i. 181, 182, ii. 104; and death of Sherry, i. 183, 184; last letter to Kiyung, i. 185, 186
- Customs jurisdiction, i. 308 *et sqq.*
- Customs officials, British seamen's affray with, 1822, i. 61, 62
- Customs Service, British subjects in Chinese, i. 236, 237, 238, ii. 298 *et sqq.*
- Czecho-Slovakia, status of subjects of, i. 297, 305
- D'AGUILAR, Major-General: and Compton case, i. 226; leaves Hong Kong, i. 227
- Danes quarrel with English seamen, 1780, i. 39
- Daniel, Mr., charged with death of Hsü A-man, i. 185
- Daniell, Mr., assaulted by Mr. Innes, 1834, i. 69
- Dart*, lorcha, i. 277
- Davenport, Mr., and Mixed Court, i. 353
- Davis, James, accuses de Silva of murder, 1814, i. 55
- Davis, Sir J. F., Governor of Hong Kong and Superintendent of Trade: opposes the kotow, 1816, i. 23, 24; attacked at Macao, 1819, i. 56; demands release of lascar, 1833, i. 68; second superintendent of trade, 1834, i. 140, 141; Governor of Hong Kong, 1844, i. 204; attitude to Compton case, i. 212; letter to Mr. McGregor, i. 214; proposes terms of settlement, i. 214; letter to Mr. McGregor, i. 216; despatch of, i. 216; difficulties of, i. 217; despatch to Palmerston, i. 218; irregularities of, i. 221, 223; letter to Palmerston, i. 223, 224; quarrel with Chief Justice, i. 225; policy of, i. 227; leaves Hong Kong, i. 227; character of, i. 228, 229; letter to Palmerston, i. 230; and right of appeal, i. 230; letter from Sir R. Alcock, 1844, i. 252; complains of attack on Commander Giffard, 1846, i. 256, 257; Kiyung's letter to, i. 262; and Chinese law, i. 263; letter from Sir R. Alcock, 1848, i. 266
- Debt, Chinese view of, i. 75
- Debtors, rendition of, i. 331
- Decker, Mrs., case of, ii. 73
- Defado. *See* Depardo
- Defence*, the, at Canton, 1689, i. 5, 29
- Delevingne, Sir Malcolm, and opium, ii. 139
- Delight*, the, officers of, imprisoned in Siam, 1684, i. 82
- De Lisle, Lieut., severely wounded, 1852, i. 271
- Denmark: trade with China, i. 6; treaty with China, i. 291, 292, ii. 324, 325
- Depardo, Antony: kills Edward Burne, 1806, i. 49, 50; tried at Old Bailey, 1807, i. 71
- Deportation, i. 197, 198, ii. 117
- De Silva, charged with murder, 1814, i. 55
- Devulaer, M., i. 32, ii. 173
- Dicey, Professor, ii. 22
- Dilkes, Captain, and the *Providence* affair, 1800, i. 45
- Diplomatic Commission at Shanghai, 1925, i. 390
- Directors, Court of: letter of, 1693, i. 29; reply on homicide cases, 1812, i. 54; consulted after *Royal Charlotte* affair, 1810, i. 53; and Amherst Embassy, i. 21
- District Courts, Chinese, ii. 34, 36
- District Magistrates, Courts of, ii. 24
- Domicile, American: in China, ii. 127; Chinese, ii. 106, 107; commercial, ii. 106, 107
- Doris*, H.M.S.: at Macao, 1814, i. 20; murder of sailor of, 1814, i. 55, ii. 288
- Driver*, H.M.S., artilleryman of, tried, 1844, i. 203
- Driving, reckless, in Chinese law, i. 115
- Dudgeon, Mr. Patrick, evidence of, in Compton case, i. 210
- Duke of York*, butcher of, commits suicide, 1820, i. 56, 57, 162

- Durant, Captain, attack on, 1832, i. 66
 Dutch : arrival in China, 1607, i. 4 ;
 attack on Macao, 1622, i. 4 ; at-
 tempts to enter trade at Canton,
 i. 4 ; occupy Formosa, 1622, i. 4 ;
 furnish naval contingent to China,
 1683, i. 4 ; embassies to China,
 i. 14, 19 ; mutiny of sailors, i. 31 ;
 English seamen quarrel with, 1778,
 i. 37 ; further quarrel, 1799, i. 44 ;
 Consul assents to despatch of
 Parsees to Bombay, 1830, i. 64 ;
 submission to local jurisdiction,
 i. 80
- Earl of Abergavenny*, the, injured
 Chinese taken on board, 1800, i. 45
Earl of Balcarres, the, midshipman of,
 and dying Chinese, 1822, i. 61
Earl of Chesterfield, the, seaman from,
 killed, 1785, i. 42
Earl of Fitzwilliam, seaman from,
 killed by Chinese, 1787, i. 44
 East India Company, English : pre-
 ponderating share of China trade,
 i. 6 ; monopoly of, i. 6 ; privileges
 at Canton, i. 6, 7 ; send representa-
 tive to Canton, 1780, i. 8 ; improve-
 ments desired by, i. 19 ; trade with
 Tongking, i. 30, 81 ; petition to
 Hoppo, i. 31 ; invokes Chinese
 jurisdiction, 1754, i. 33 ; send
 petition to Peking, 1759, i. 35 ; and
 execution of Frenchman, 1780,
 i. 39 ; and *Lady Hughes* affair,
 1784, i. 41 ; and homicide cases,
 i. 50 ; and *Duke of York* affair,
 1819, i. 57 ; and Terranovia affair,
 i. 59 ; letter to Lord Hastings,
 1821, i. 59 ; petition for reforms,
 1831, i. 66 ; and extraterritoriality
 in Far East, i. 78, 96 ; factory at
 Nagasaki, i. 80 ; agreement at
 Ningpo, 1736, i. 81 ; factory at
 Acheen, i. 81 ; factory in Siam,
 i. 81 *et sqq.* ; agreement with
 Hoppo, 1715, i. 81, 96 ; treaty
 with Siam, 1826, i. 85 ; treaty with
 Quedah, 1800, i. 86 ; treaty with
 Perak, 1818, i. 86 ; treaty with
 Rumbowe, 1831, i. 86 ; treaty with
 Salangore, 1818, i. 86 ; treaty with
 Johore, 1818, i. 86 ; treaty with
 Siam, 1826, i. 86 ; policy of, as
 regards extraterritoriality, i. 87,
 88 ; approaching abolition of
 monopoly of, i. 97 ; termination
 of monopoly, 1833, i. 103, 137, 141 ;
 policy of, ii. 161, 166
- East India Company, Dutch, in Siam,
 i. 84, ii. 166
 East India Company, French, in
 Siam, i. 84
 Egypt : law reform in, i. 269, 336 ;
 extraterritoriality in, ii. 168, 169
 Egypt, Ancient, ii. 157
 Elgin, Lord, i. 334
 Elizabeth, Queen : Age of, i. 2 ; and
 John Mildenhall, i. 15 ; letter to
 King of Acheen, i. 81
 Ellice, Mr., evidence of, in Compton
 case, i. 210, 222
 Elliot, Admiral G., appointed pleni-
 potentiary, 1840, i. 173
 Elliot, Captain : and Commissioner
 Lin, i. 143 ; agrees to surrender
 opium, 1839, i. 144 ; rejects bond,
 i. 145, 172 ; informs Lin that
 British will trade at Macao, i. 145 ;
 and opium traffic, i. 145, 200 ; at
 Hong Kong, 1832, i. 147 ; at
 Macao, i. 148 ; tries five seamen at
 Hong Kong, i. 153 ; invites Chinese
 to be present, i. 154 ; address to
 jury, i. 154, 155 ; sentences sea-
 men, i. 155 ; protests against boy-
 cott, i. 159 ; fires on Chinese war-
 junks, i. 159, 160 ; interviews
 Chinese at Macao, i. 161 ; offers to
 permit search of British ships, i.
 162 ; issues notice to British sub-
 jects, i. 163 ; asks Captain Smith
 to restrain British vessels, i. 164 ;
 position of, i. 166 ; and European
 rights in China, i. 170 ; appointed
 plenipotentiary, 1840, i. 173 ; re-
 called, 1841, i. 174 ; negotiates
 with Keshen, i. 201, ii. 254 ;
 Palmerston's despatches to, ii. 219
et sqq. ; and affray of 1837, ii. 223
et sqq.
 Ellis, Mr., in favour of the kotow,
 i. 23
 Elmslie, Mr., Consul at Canton, i. 232,
 233 ; and attack on Mr. Seth,
 1854, i. 273
 Embassies to China, early, i. 14, 15
Emily, the, i. 58, ii. 184 *et sqq.*
 Empress Dowager, ii. 12
 English law : centralisation of, i. 1 ;
 of murder and manslaughter, i. 155
 English trade with China, early, i. 5
Escondico, the, fined, ii. 65
 Ethiopia, ii. 165
 Exclusion policy of Eastern nations,
 i. 26
 Extradition, ii. 152, 153
 Extraterritoriality : connection with
 politics, i. 2, 3 ; basis of, i. 27, 181,

- 182 ; in Tongking, i. 30 ; claimed by East India Company at Canton, 1729, i. 31 ; at Canton before 1780, i. 40 ; foreigners claim at Canton, 1784, i. 42 ; East India Company request British Government to obtain, 1821, i. 60, 61 ; between Burma and China, 1765, i. 72, 73, 74 ; in Siam, i. 84 ; between Russia and China, 1689-1851, i. 88 *et sqq.* ; in Turkey, i. 90, 95 ; of Turks in Malta, i. 95 ; conceded by Chinese Code, i. 102 ; in Morocco, Algiers, Tunis, and Tripoli, i. 168 ; forms of, i. 168, 169, 170 ; issue raised by murder of Lin Wei-hi, i. 170 ; proposal of *The Times*, 1865, i. 242, 243 ; for Europeans in China after 1842, i. 248 ; a defensive system, i. 251, 271 ; and protection, i. 275, 276 ; Russian, in China relinquished, 1920, 1924, i. 289 ; German, in China abolished, 1917, i. 290 ; difficulty of application, i. 324 ; obstacle to inland residence, i. 339, 340 ; of United States, extended, 1880, i. 342, 343 ; problems of, insoluble, 1880, ii. 1 ; defects of, ii. 5, 145 *et sqq.* ; nature of, ii. 93 *et sqq.* ; in time of war, ii. 141 *et sqq.* ; and Chinese sovereignty, ii. 153 ; relinquishment of, ii. 154, 172 ; historical view of, ii. 155 *et sqq.* ; decline of, in Europe, ii. 163 ; in Far East, ii. 166 *et sqq.* ; termination of, ii. 167 *et sqq.*
- Extraterritoriality Commission, i. 392, ii. 7, 14 ; and French Mixed Court, i. 401 ; and Chinese law reform, ii. 3 ; recommendations of, ii. 8, 9, 10 ; and Chinese Constitution, ii. 17 ; on Police Offences Law, ii. 20 ; and Chinese Law of Civil Procedure, ii. 26 ; and Chinese law, ii. 32, 33, 34 ; and Chinese judicial system, ii. 43, 44 ; and enforcement of Chinese law, ii. 53, 54, 66, 67, 71, 73, 75 ; and Chinese law in British Courts, ii. 96 ; and foreign witnesses, ii. 147 ; and extradition, ii. 152
- Factories at Canton, i. 9, 10 ; imprisonment of foreigners in, 1839, i. 144, 171 ; Dutch and English, plundered, 1842, i. 253
- Factory system : in India, i. 79 ; in the Far East, i. 87, 88, ii. 161
- Fatqua, bankruptcy of, i. 77
- Fatshan, attack on Englishman at, 1847, i. 261
- Feng Kuo-Chang, President, ii. 14
- Fighting, Chinese law of, ii. 116, 117
- Fisher, R., deposition of, 1844, i. 182
- Five Ports, the, i. 3 ; opened to trade, 1842, i. 174 ; British consuls at, i. 174
- Flint, Mr. : summoned to Canton, 1754, i. 33, 34 ; conveys Company's petition, 1789, i. 36 ; imprisonment of, 1759, i. 36
- Foochow : attack on Mr. Parker at, 1845, i. 255 ; riots at, 1846, i. 257 ; attack on Mr. Parish at, 1848, i. 267 ; flogging of missionaries at, 1852, i. 270, 271 ; riot at, 1856, i. 273
- Forbes, Mr., American Consul at Canton, 1844, i. 178 *et sqq.*
- Forbes, W. A., deposition of, 1844, i. 182, 183
- Foreign Laws, Chinese Rules for the Application of, i. 383
- Formosa : occupied by Dutch, 1622, i. 4 ; proposed attack on, 1874, i. 239
- Forrest, Mr. R. T., British Vice-Consul at Shanghai, i. 355, 356, 357, 358
- France : trade with China, 1660, i. 6 ; admits Chinese jurisdiction, i. 32 ; resists Chinese jurisdiction, i. 32 *et sqq.* ; appoints Consul at Canton, i. 37 ; admits Chinese jurisdiction i. 39 ; seventeenth-century treaties with Siam, i. 84 ; Treaty of Whampoa, 1844, i. 187, ii. 281 *et sqq.* ; murder of Chapdelaine, i. 274 ; Treaty of Tientsin, 1858, i. 285, ii. 314 *et sqq.* ; *protégés*, i. 305, ii. 81 ; jurisdiction in China, i. 323 ; Mixed Court at Shanghai, i. 200 *et sqq.* ; Mixed Court at Hankow, i. 405 ; Washington Conference, ii. 5, 6 ; extraterritorial jurisdiction in China, ii. 80, 81, 82 ; war with China, 1881, ii. 141 ; Convention of Tientsin, ii. 362
- Frazer, Sir Everard, and position at Shanghai, 1911, i. 377
- Frederick II, Emperor, ii. 165
- Frederick, William, case of, ii. 59, 60
- French, Chief Justice, i. 237
- French Code, ii. 2
- French Consul : surrenders Frenchman, 1780, i. 39 ; complains of conduct of English seamen, 1785, i. 43
- French consuls, efficiency of, i. 323

- Frenchman: execution of, 1780, i. 39; beaten by English seamen, 1785, i. 43; trial of, ii. 173
- Frontier Traffic, Rules for, between Korea and China, 1883, ii. 341, 342
- Fryer, Dr., i. 79
- Gaelic*, the, search of, 1894, i. 142
- Galehtengpo, General, ii. 261 *et seq.*
- Games, dangerous, in Chinese law, i. 112, 113
- Gao, Dr., case of, ii. 58
- German assessor at Mixed Court, 1905, i. 372, 373
- German Code, ii. 2
- German subjects, status of, in China, i. 291, 382, 383
- Gia-long, King of Annam, i. 74
- Giffard, Commander, attack on, 1846, i. 256
- Gilman, Mr., evidence of, in Compton case, i. 210
- Goa: embassies from, to China, i. 14; Governor of, i. 14, ii. 289
- Golconda*, the, i. 62
- Golconda*, war between Siam and, 1685, i. 83
- Goodwin, G. W., Judge, British Supreme Court, i. 244, 245
- Governor of Hong Kong: power to pardon criminals, i. 240; office separated from Chief Superintendency of Trade, 1859, i. 235, 240. *See also* Hong Kong
- Great Britain: enters China trade, i. 8 *et seq.*; decision to send Macartney Embassy, i. 10; Macartney Embassy, 1792, i. 15 *et seq.*; occupies Macao, 1809, i. 20, ii. 289; Amherst Embassy, 1816, i. 20 *et seq.*; resists Chinese jurisdiction, 1637-1834, i. 27 *et seq.*; searches American vessels, 1805, i. 49; and Chinese bankruptcies, i. 74 *et seq.*; opens China trade, i. 76, 137; commerce in Far East, i. 78 *et seq.*; treaties with Siam, i. 85; attitude to Far Eastern States, i. 87; tributary of China, i. 91; Napier Mission, i. 137 *et seq.*; attitude to opium question, i. 145 *et seq.*, 172 *et seq.*, ii. 134 *et seq.*; policy of, i. 168, 169; Treaty of Nanking, 173 *et seq.*, ii. 290; early system of extraterritoriality in China, i. 188 *et seq.*, ii. 285 *et seq.*; cession of Hong Kong, i. 201; Compton case, i. 205 *et seq.*; British subjects in Chinese service, i. 236 *et seq.*, 313 *et seq.*, ii. 298 *et seq.*; Chinese British subjects, i. 246, 247; policy of, 1841, i. 249, 250; protection of British subjects in China, i. 257; *Arrow* question, i. 276 *et seq.*, ii. 310 *et seq.*; second Anglo-Chinese War, i. 283; extension of treaty rights, i. 284; Treaty of Tientsin, 1858, i. 284, 285, ii. 312 *et seq.*; *protégés*, i. 304; Chinese Customs Question, i. 310 *et seq.*; revision of Treaty of Tientsin, i. 321 *et seq.*; exercise of jurisdiction by, i. 322; question of inland residence, i. 340; Chefoo Convention, 1876, i. 340, 341, 342, 359, 366; and Chinese law reform, i. 2; Washington Conference, ii. 5, 6; extraterritorial jurisdiction in China, ii. 77, 78, 90 *et seq.*, 104 *et seq.*; protection of industrial property, ii. 131 *et seq.*; taxation in China, ii. 151; protectorate in Egypt, ii. 169; and law reform in Siam, ii. 171; treaty with Persia, 1928, ii. 171; case of Mr. Keating, ii. 212 *et seq.*; affray of 1837, ii. 223, 224, 225; Superintendents of Trade, ii. 271 *et seq.*; and status of Macao, ii. 287 *et seq.*; treaties with China, ii. 356, 357, 358, 359; gaols in China, ii. 362, 363, 364
- Great War, China and Central Powers, i. 382, 383
- Greece, ancient, extraterritoriality in, ii. 156, 157
- Grey, Earl: letter to Sir J. F. Davis, i. 266; attitude of, i. 227; and extraterritoriality, i. 241
- Groves, W., deposition of, 1844, i. 182
- Guizot, French Foreign Minister, i. 187
- Gumpach, Baron von, sues Sir R. Hart, i. 313, 314, 315
- Gundobald, ii. 158
- HAGUE, the, Dutch appeals carried to, i. 324
- Hall, W. E.: view of extraterritoriality, ii. 100; and Laurentio Strozzi, ii. 160
- Hallam, S. J., deposition of, 1844, i. 183
- Hamburg trade with China, i. 6
- Han Teh-nieng, case of, ii. 55
- Hankow*, the, homicide on, 1883, i. 238
- Hankow*: Mixed Court at, i. 405; extortion at, ii. 60; British Concession at, ii. 65

- Hanseatic League, ii. 159, 160, 161, 162
- Harbin convicts, case of, ii. 74
- Harlequin*, the, trial of seamen of, 1844, i. 203, 204
- Harmon, Mr. F. H., and extra-territoriality, ii. 70, 71
- Hart, Sir Robert: and a common code, i. 254, 324 *et seq.*, 331; sued by Gumpach, i. 313, 314, 315; proposals of, i. 341; on consuls, ii. 150; Inspector-General of Customs, ii. 299
- Hastings*, the, boy from, kills Chinese, 1781, i. 40
- Hastings, Lord, Governor-General of India, i. 59
- Heard, John, deposition of, 1844, i. 183
- Heath, Captain, of the *Defence*, i. 29
- Heinsohn, case of, ii. 55
- Henan Chi, case of, ii. 59, 69
- Henry the Navigator, i. 3
- Hercules*, the, attack by seamen of, on Chinese, 1833, i. 67, 68
- High Courts, Chinese, ii. 34, 37
- Hingtai, bankruptcy of, i. 76, 77
- Ho Yu Teen, rendition of, 1865, i. 231, 232
- Hobson, Dr., and house in Canton, 1848, i. 252
- Holland, Sir T. E., i. 13
- Homicide: American law of, i. 184, 185; Chinese law of, i. 113, ii. 18, 19, 68, 190, 191, 197, 252, 253, 254; committed by foreigners in China, i. 102. *See also under* appropriate headings
- Honan, report of censor of, on torture, 1817, i. 131
- Hong merchants, debts of, i. 75 *et seq.*
- Hong Kong:
- (1) British Criminal Court at, 1839, i. 143; affray at, 1839, i. 146; Captain Elliot at, i. 147; trial of seamen at, i. 153; anchorage at, abandoned, i. 164; office of Governor of, united with Superintendentcy of Trade, i. 188; Legislative Council of, i. 188, 190, 192, 193; imprisonment of British subjects in, i. 198; connection with Canton trade, i. 200; jurisdiction of Chief Magistrate of, i. 201; laws applying to natives of, i. 201; centre of British activity in South China, i. 202; constituted a separate colony, i. 202; English law in, i. 202, 203; Chief Justice of, and consular jurisdiction, i. 193; and proposed Court of Appeal, i. 245; expedition from, 1847, i. 261; boycott of, 1925, ii. 61
- (2) Supreme Court of, and British subjects in China, i. 191, 192; jurisdiction of, i. 193, 195, 203, 205; appeals to, i. 196, 197, 232; and Macao, i. 199, ii. 290, 291; origin of, i. 200; and consular jurisdiction, i. 200 *et seq.*, 229 *et seq.*, 235; opened, 1844, i. 205; and Compton case, i. 208, 217 *et seq.*; independence of, i. 229; restriction of appeal to, i. 230, 232; power to issue mandamus, i. 236; attack on, 1863, i. 240; reversal of decisions by, i. 241, 242, 251; end of connection with consular jurisdiction, 1865, i. 242; and customs cases, i. 310; appellate jurisdiction of, i. 322; and extra-territoriality, ii. 78, 104
- Hong Kong, Canton, and Macao SS. Co.'s wharf, ii. 65
- Hooper, J. R., dismissed from Chinese Customs, 1859, i. 313
- Hoppo, the, i. 31, 309; grants privileges to East India Company, i. 6, 7, 81; and *Neptune* affair, 1807, i. 51; and *Royal Charlotte* affair, 1810, i. 52; house of, burned by Mr. Innes, 1833, i. 66, 67; prohibits departure of foreigners from Canton, 1839, i. 144
- Hornby*, the, lascar of, killed by Chinese, 1796, i. 44
- Hornby, Sir Edmund, Chief Justice of British Supreme Court, i. 243, 244, 245; decision of, 1865, i. 346; ii. 369
- Ho-shen, i. 17
- Hsu Kwang tsin: and attack on Messrs. Bowman and Johnson, 1848, i. 267; and attack on Mr. Meadows, 1848, i. 269, 270
- Hsü A-man, death of, i. 170, 177 *et seq.*, 254, ii. 93
- Hsü Shu-Tsing, case of, ii. 54
- Hulme, Mr., Chief Justice of Hong Kong: career of, i. 204; and Compton case, i. 221, 222, 223, 224, 230; difficulties with Sir J. F. Davis, i. 225; charged with drunkenness, i. 226; suspended, i. 226; restored to office, i. 227, 228
- Hunt, Mr., fires on Chinese, 1848, i. 265
- Hunter, Mr., and Canton gardens, i. 205
- Hwang, Governor of Canton, and Cantonese, 1845, i. 259

- Hwangchuh-che : assault on foreigners at, 1847, i. 264 ; murder of six Englishmen at, 1847, i. 264, 268
Hyacinth, H.M.S., at Chuenpi, i. 165
- ICHANG, murder at, ii. 57
 Ilberry, Mr., assaults Chinese, 1834, i. 69
 Ilipu, trial of, ii. 257, 258, 259
 Impeachment, Chinese Court of, ii. 48
 Industrial Property, protection of, in China, ii. 131 *et seq.*
 Inland residence impossible with extraterritoriality, i. 339, 340
 Innes, Mr. : high-handed conduct of, 1833, i. 66 ; assaults Mr. Daniell, 1834, i. 69 ; case of, 1835, ii. 222
 International law, Chinese trade and, i. 10
 International Tribunal, desirability of, i. 331
 Intestacies of British subjects in China, ii. 110
 Irkutsk, Governor of, i. 94
 Ismayloff, i. 15
 Italian assessor, protest of, 1927, i. 397
 Italy : trade with China, i. 6 ; treaty with China, i. 297, ii. 330, 331, 332 ; extraterritoriality of, ii. 83, 84
- JACKSON, Mr., assault on, 1832, i. 66
 Jackson, Mr. R. B. : assaulted, 1845, i. 254 ; consul at Foochow, i. 267
 James I., letter to Emperor of Japan, i. 80
 James, Eldon R., and extraterritoriality in Siam, i. 83, 84
 Japan : excludes foreign trade, i. 11 ; extraterritoriality in, 1610, i. 80 ; consular jurisdiction in, i. 235 ; treaties with China, i. 298 *et seq.*, ii. 334 *et seq.* ; war with China, 1895, i. 299, 301, ii. 141, 142 ; Russo-Japanese War, ii. 142 *et seq.* ; extraterritoriality in, ii. 167, 170, 171 ; abolition of extraterritoriality in, ii. 2
 Japanese assessor : action of, at Mixed Court, 1909, i. 374 ; and Shanghai riots, 1925, i. 390
 Japanese Codes, i. 241, ii. 2
 Japanese cotton mills, attack on, at Shanghai, 1925, i. 390
 Jardine, Mathieson & Co., seizure of property of, i. 328
 Jesuits, i. 15
 John Dugdale, the, i. 310
- Johnson, Mr., attack on, 1848, i. 267
 Johore, treaty with East India Company, 1818, i. 86
 Jovino, L. E., and opium, ii. 137
 Judge, Hong Kong, at treaty ports, i. 192
 Judicial Commission at Shanghai, 1925, i. 390, 391
 Judicial offices, Chinese, ii. 34, 39
 Judicial Police Regulations, Chinese, ii. 24
 Judicial Preparatory Departments, ii. 35, 37, 38
 Judicial system, Chinese, ii. 34 *et seq.*
 Jurisdiction, conflicts of, i. 27 *et seq.*
 Jurisprudence, sociological, i. 2
Jus civile, i. 13
Jus gentium, i. 1, 13, ii. 157, 158
Jus sanguinis and nationality, ii. 30, 151
- Kajow, the, seized by Burgevine, i. 239
 Kashgar : British jurisdiction at, ii. 77 ; British Court at, ii. 90, 91, 92, 104
 Keating, Mr., case of, i. 67, ii. 212 *et seq.*
 Kennedy, Thomas, master of the *Arrow*, i. 277
 Kent, the, master-at-arms of, wounds Chinese, 1822, i. 61
 Keshen : negotiates with Captain Elliot, i. 201 ; trial of, ii. 254, 255, 256, 257
 Khun Yeong, case of, 1897, i. 247
 Kia King, Emperor, i. 25
 Kiakhta, treaties of, i. 91, 92, 93
 Kiangsu, Viceroy of, i. 115 ; fooyuen of, on Chinese prisons, i. 127
 Kien Lung, Emperor, i. 19 ; degrades official employing illegal tortures, i. 130
 King George, the, gunner's mate kills Chinese, 1722, i. 30
 Kingqua, comprador of, assaulted by Mr. Ilberry, 1834, i. 69 ; bankruptcy, i. 77
 Kinkiang, People's Courts at, ii. 66
 Kiying : Chinese plenipotentiary, 1842, i. 174 ; and death of Hsü A-man, i. 179 ; on character of Cantonese, 1844, i. 181 ; reply to Mr. Cushing, i. 183 ; abandons claim for Hsü A-man, i. 186 ; at Macao, 1844, i. 187 ; investigation by, 1846, i. 209 ; version of Compton case, i. 212, 213, 214 ; presses

- for compensation, i. 214; grants extraterritoriality to Belgium, 1845, i. 248; letter from Sir J. F. Davis, 1844, i. 252; and assault at Canton, 1845, i. 254; prompt action of, i. 255, 256, 260; and attack on Commander Giffard, 1846, i. 256, 257; and attack on seamen, 1846, i. 258; and attack on Englishmen, 1847, i. 261; and assault on Malay, i. 262; and robbery from Mr. Roberts, 1847, i. 212; and assault on Reynvaan and Vaucher, 1847, i. 264; and attack on eight foreigners, 1847, i. 264; grants additional privileges to Macao, 1842, ii. 291
- Koo, Dr. Wellington, view of extraterritoriality, ii. 97
- Korea: annexation of, by Japan, 1910, i. 302; extraterritoriality in, ii. 167, 168; treaty with China, 1882, ii. 339, 340, 341
- Koreans, status of, in China, i. 301, 302
- Koxinga, i. 4
- Kropotoff, i. 92
- Kuang Hsu, Emperor, ii. 12
- Kuldja, Treaty of, 1851, i. 94, 95
- Kung, Prince, ii. 298
- Kwangtung: legal administration in, ii. 48; (Port Arthur) status of foreigners in, i. 307, 308; jurisdiction in, ii. 352, 353
- Kweilee*, the, case of, ii. 57
- LABOUR Union Statute, Chinese, ii. 11, 385 *et seqq.*
- Labour Unions, Chinese: activity of, ii. 61 *et seqq.*; looting by, ii. 66
- Lady Hughes* affair, the, 1784, i. 34, 40, 41, 42, 47, 96, 147, 152, ii. 174, 175, 180
- Lady Mary Wood*, the, i. 232, 310
- Lady Melville*, the, seaman of, wounds Chinese, 1821, i. 57
- Lagréné, M. Th. de, French Minister to China, i. 187
- Lambton, Ralph, debts of, i. 82
- Lancaster, Sir James, at Acheen, 1602, i. 81
- Land Expropriation Law, Chinese, ii. 31
- Land Regulations, Shanghai, 1845, i. 345, 378; 1869, i. 345, 347, 363, 369
- Lanning and Couling, opinion of Chinese law, i. 121, 122
- Lannoy, M., Belgian Consul-General, i. 248
- Lansdown*, the, seaman from, beats Chinese, 1787, i. 43
- Lathom*, the, theft from, 1765, i. 37
- Lausanne Conference, ii. 169, 170
- Law Codification Commission, Chinese, ii. 3, 7
- Law Merchant, i. 2, ii. 159
- Law reform in China, ii. 2
- Lawrence, George, murders by, i. 81
- Lay, Mr., Consul at Foochow, i. 255
- Leased areas, jurisdiction in, i. 306, 307
- Le Gendre, General, case of, 1874, i. 239
- Legal profession, absence of, in China, i. 100
- Leipzig, German appeals carried to, i. 324
- Leslie, Mr., unruly conduct of, 1779, i. 38
- Lester, Captain, assault on, 1831, i. 65, 66
- Lex talionis* in Chinese law, i. 118
- Li, Governor of Canton, i. 184; on Chinese prisons, i. 129
- Li Tao-chao, case of, ii. 58
- Li Yuan-Lung, President, ii. 14
- Lin Pai-shui, case of, ii. 55
- Lin Tse-su, Imperial Commissioner at Canton, 1839, i. 143; and opium traffic, i. 120, 144, 171; reopens trade, i. 145; sends officers to Hong Kong, i. 147; report of officials to, 150; proclamation of, i. 150; boycotts British, i. 153; further proclamations, i. 157, 158, 164, 165; declares war, i. 159; repeats demand for surrender of opium, i. 161; and murderer of Lin Wei-hi, i. 161; abandons demand for murderer of Lin Wei-hi, i. 163; resumes demand, i. 164; attitude of, i. 170; and British, ii. 289, 290
- Lin Wei-hi, murder of, i. 143 *et seqq.*, 172, 201, ii. 93
- Lindsay, Mr., assaulted, 1832, i. 66
- Lintin*, the, i. 65
- Lintin: Chinese attack seamen at, 1821, i. 59, 60; homicide at, 1831, i. 65; opium ships at, i. 70; opium traffic at, i. 171
- Lion*, the, sent to Japan and Manila, i. 16
- Local Government, Chinese Law of, ii. 31, 32
- Lockhart, Dr. W., attack on, 1848, i. 265
- Logan, homicide by, 1883, i. 238

- Loo Hing-yun, Chief Justice of Provisional Court, i. 399
- Lorchas, status of, i. 276, 277
- Lord Anson*, the : sailor of, murdered by Frenchman, 1754, i. 32, 33, 34 ; musket fired from, 1754, i. 32
- Lord Camden*, the, seamen of, wound Chinese, 1769, i. 37
- Loureiro, Captain, assaults wife of Captain Baker, 1829, i. 63
- Louza Police Station : burned, 1903, i. 371 ; attacked, 1925, i. 390, 391
- Lowrie, Mr. W. M., murdered, 1847, i. 264
- Lowther Castle*, the, i. 55
- Loyal Adventure*, the, i. 28
- Lunacy, British jurisdiction in, ii. 119
- Lurton, Commissioner, i. 307
- Luxemburg, subjects of, in China, i. 305
- MABILEAU, M., death of, i. 339
- Macao : Portuguese settle at, 1557, i. 3 ; Charter of Privileges, i. 4 ; Chinese exercise jurisdiction at, i. 4 ; attacked by Dutch, i. 4 ; English ships at, 1664, 1674, i. 5 ; occupied by British, i. 20 ; H.M.S. *Doris* at, i. 20 ; homicide at, 1689, i. 29 ; murder at, 1814, i. 55 ; conflict of jurisdiction at, 1773, i. 37 ; Governor of, demands escaped slaves, 1780, i. 39 ; Portuguese resistance to Chinese jurisdiction at, 1785, i. 42 ; Governor of, imprisons English seamen, 1786, i. 43 ; murder of Chinese at, 1805, i. 48, 49 ; attack on Sir J. F. Davis at, 1819, i. 56 ; attack on lascars at, 1819, i. 56 ; Portuguese kills Chinese at, 1823, i. 62 ; Portuguese resist Chinese jurisdiction at, i. 62 ; Portuguese exercise of jurisdiction over British at, 1829, i. 63, 64 ; attack on Mr. Lindsay and Mr. Jackson at, 1832, i. 66 ; attack on Captain Durant at, 1832, i. 66 ; Governor refuses to imprison escaped convicts, 1834, i. 69 ; arrival of Lord Napier at, i. 140 ; Captain Elliot at, i. 148 ; case of lascar at, i. 152 ; evacuated by British, 1839, i. 157, 158, 159 ; boycott of British at, 1839, i. 156 ; Chinese officials denounce British, 1839, i. 156 ; Governor invited to expel British, i. 157 ; Captain Elliot negotiates at, i. 161 ; the *Thomas Coutts* enters, i. 163, 164 ; Captain Smith leaves, i. 165 ; jurisdiction of Portuguese at, i. 168 ; Mr. Cushing lands at, i. 178 ; Kiying at, 1844, i. 187 ; considered as within Chinese dominions, i. 190, 199, 203 ; no adequate protection of British at, i. 200 ; status of, before 1887, ii. 287 *et seq.* ; British occupation of, 1802, 1808, ii. 289
- Macartney, Earl, Embassy of, i. 10, 14 *et seq.* ; failure of, i. 19, 25
- McGregor, Mr., British Consul at Canton : letter to, i. 205, 206 ; reply of, i. 206 ; further letter to, i. 207 ; attitude of, i. 207 ; letter to Mr. Compton, i. 209 ; institutes inquiry, i. 209 ; fines Mr. Compton, i. 211 ; letters to Mr. Compton, i. 211 ; difficulties of, i. 212 ; errors of, i. 219 ; letter to Hong Kong Supreme Court, i. 219, 220 ; position of, i. 220, 221 ; and assault at Canton, 1845, i. 254
- Macintosh, Captain, i. 19
- McKay, case of W. M., ii. 75
- Mackenzie, Captain, murder of, 1830, i. 64
- Macqueen*, the, assault on Captain Walker of, 1826, i. 62
- Madras*, H.M.S., i. 45
- Madras, British factory at, i. 78, 79
- Madrid, Spanish appeals carried to, i. 323
- Magistrates' Courts, Chinese, ii. 40
- Malacca, i. 3, 10, 14
- Malay, assault on, 1847, i. 262
- Malay Peninsula, British in, i. 86
- Malta, Turkish extraterritoriality in, i. 95
- Manchuria, martial law in, 1904, ii. 145
- Mandalay, Sessions Court at, ii. 115
- Mandjour*, case of the, 1904, ii. 144
- Manila, Spanish appeals carried to, i. 323
- Maritime prizes, Chinese law of, ii. 30
- Marquis of Ely*, the, two sailors of, stabbed, 1813, i. 54
- Marriages of British subjects, validity of, i. 235
- Martial law in China, ii. 29, 30
- Martin, Mr. Montgomery, assaulted, 1845, i. 254
- Mary Bannatyne*, the, assault on seamen from, 1846, i. 258
- Master, Sir Streynsham, Governor of Madras, i. 78
- Meadows, Mr., attack on, 1848, i. 269, 270

- Medhurst, Dr. W. H., attack on, 1848, i. 265
- Mello, A. M. de, i. 14
- Mexico: Chinese trade with, i. 6; treaty with, i. 303, ii. 349, 350; exchange of notes with, 1921, ii. 2 *et sqq.*
- Middle Ages, ii. 159, 160
- Mildenhall, John, i. 5, 15
- Military Courts in China, ii. 21, 35, 41
- Milne, Dr., view of Chinese law, i. 119, 169
- Milner, Lord, ii. 365, 366
- Mining enterprises, Chinese law of, ii. 31
- Minister, British, power to make rules, i. 242
- Ministry of Justice, Chinese, i. 391, ii. 23, 25, 30, 35, 44, 45, 71, 75
- Minto, Lord, occupies Macao, 1808, i. 20
- Missionaries, Chinese, flogged, 1852, i. 271; protection of, i. 285
- Mixed cases in the Tientsin district, ii. 361
- Mixed Court, International, at Shanghai, i. 297, 324, 327, 333, 344 *et sqq.*; jurisdiction of, i. 348, 366, 367; law administered in, i. 349; rules for, i. 351, 352, 353, 400; opposition of British merchants to, i. 354, 355; controlled by Consular Body, 1911, i. 376; proposed abolition of, 1910, i. 375; rendition of, 1927, i. 393 *et sqq.*; at Peace Conference, ii. 5; Extraterritoriality Commission and, ii. 9; proceedings at, 1868-9, ii. 375 *et sqq.*
- Mixed Court, French, at Shanghai, jurisdiction of, defined, i. 366, 367, 400 *et sqq.*
- Mixed Courts: in Egypt, i. 250, ii. 169, 365 *et sqq.*; proposed for China, i. 282
- Monopoly companies, end of, i. 70
- Montenegro, subjects of, in China, i. 305
- Montigny, M. de, French Consul at Shanghai, i. 344
- Moore, Dr., view of extraterritoriality ii. 93
- Morocco, extraterritoriality in, i. 168
- Morphia, Chinese law relating to, ii. 20, 21
- Morrison, Dr., view of Chinese law, i. 105
- Morrison, Dr. (the younger), interpreter to Lord Napier, 1834, i. 140
- Morse, Dr. H. B.: view of Chinese law, i. 77; on function of Chinese magistrate, i. 126; and homicides in China, i. 238; and Chinese punishments, i. 270; and murder of Chapdelaine, 1854, i. 275; and Customs Court, i. 317; on foreigners in China, i. 324; and status of Macao, ii. 294
- Mortgages: Chinese law of, ii. 25; British, registration of, ii. 122
- Moss, Mr., severely wounded, 1839, i. 157
- Most Favoured Nation Clause, ii. 131
- Mowqua, i. 50
- Muirhead, Mr. W., attack on, 1848, i. 265
- Municipal Council at Shanghai, i. 345 *et sqq.*, 360, 367 *et sqq.*, 382, 388
- Murder: in Chinese law, i. 110, 111 *et sqq.*, ii. 250; concealment of, in Chinese law, i. 116; by British subjects, ii. 114
- Murdoch, and Saris' visit to Japan, i. 80, 81
- NAGASAKI, factory at, 1619, i. 80
- Nanking: illegal taxes at, i. 328; condition of Chinese prisons at time of Treaty of, i. 121, 122; Treaty of, 1842, i. 74, 88, 143, 147, 170, 174, 175, 188, 200, 201, 202, 231, 249, 251, ii. 135, 290
- Napier, Lord, at Canton, 1834, i. 137 *et sqq.*
- National Convention, Chinese, ii. 12, 13
- National Lands, Chinese Law of, ii. 31
- Nationalist Government, legislation of, ii. 379 *et sqq.*
- Nationality, Chinese Law of, ii. 30
- Naval Courts in China, ii. 21, 35, 41
- Navigateur*, the, piracy of, 1829, i. 63, ii. 201 *et sqq.*
- Negligence in Chinese law, ii. 61
- Nepal, Rajah of, i. 19
- Neptune* affair, the, 1807, i. 50, 51, 52, ii. 175 *et sqq.*
- Nerchinsk, Treaty of, i. 89, 90
- Netherlands, the: enrolled as tributary to China, i. 91; treaty with China, i. 292, ii. 326
- New South Wales, escaped convicts from, i. 64, 69
- Nganhwuy, atrocious tortures by magistrate, i. 133, 134
- Ningpo, agreement between East India Company and officials at, 1726, i. 81
- Non-Extraterritorial Nationals, Chinese Law Relating to, ii. 27

- Norfolk*, the, theft from, 1764, i. 36
North China Daily News, the, and Provisional Court, 1927, i. 398, 399
 Norton-Kyshe, Mr. J. W., and transfer of British Court to Hong Kong, i. 201, 202; and British Court for China, i. 204; and consular ordinances, i. 233, 234; comment on British Supreme Court, i. 244
- OMAR, capitulation of, ii. 164
 Opium Commission, ii. 137, 138
 Opium Conferences, ii. 138, 139, 140
 Opium Convention, Hague, 1912, ii. 138
 Opium Question, i. 166; and murder of Lin Wei-hi, i. 150; and extra-territoriality, ii. 134 *et seq.*
 Opium ships, i. 63, 65, 67, 68, 70
 Opium traffic, attempted suppression, 1839, i. 120, 144, 170, 171; policy of Great Britain, i. 172; prohibited by Chinese Code, ii. 19
 "Opium War," i. 143
 Ordinances, Colonial and Consular. *See table*
 Ostroumoff, case of, ii. 56
- PAGE, Edward, homicide by, 1881, i. 236, 237
Pall Mall Budget, the, and the Mixed Court, i. 361
 Palmerston, Viscount: memorial to, 1838, i. 77; instructions to Lord Napier, i. 139, 140; memorial to, 1839, i. 158; and first Anglo-Chinese War, i. 166, 167; and opium traffic, i. 172, 173; letter to Captain Elliot, i. 173; Mr. Compton appeals to, i. 217; ignores letter of Sir J. F. Davis, i. 224; and Compton case, i. 224, 225, 228; replaced by Aberdeen, i. 249; and riots at Foochow, 1846, i. 258; and protection of British subjects, 1847, i. 261; and attack on British, 1847, i. 263; despatch from, i. 267; and attack on Mr. Meadows, 1848, i. 270; and customs cases, i. 310; and Mr. Keating, ii. 219 *et seq.*
 Paotingfu, robbery at, ii. 57
 Parker, Mr., counsel for Crown in Compton case, i. 220
 Parker, Dr. Peter, and reform of Chinese law, i. 269, 284
 Parkes, Sir Harry, attack on, 1845, i. 255, 256, 257; Consul at Canton, 1856, i. 277; position of, i. 277, 278; and Mixed Court, i. 348
 Parliament, Chinese, ii. 13 *et seq.*
 Parry, Mr. F., i. 361
 Parsees, three: murder by, 1830, i. 64; released, 1831, i. 65
 Peace Conference, 1919, ii. 4, 5; Chinese delegation to, i. 386, 387, ii. 146
Pearl, the, lorcha, at Chuanchow, i. 316
 Peking, Convention of, 1869, i. 336; Russian Treaty of, 1860, i. 287, 288, 289, 307, ii. 319 *et seq.*; Italian Treaty of, 1866, i. 297, ii. 330, 331, 332; Portuguese Treaty of, 1887, i. 302, ii. 292, 293, 346, 347, 348; Austrian Treaty of, 1869, ii. 332, 333, 334; Belgian Treaty of, i. 292 *et seq.*, ii. 328, 329, 330; Japanese Treaty of, 1896, ii. 335, 336; Swedish Treaty of, 1908, ii. 350, 351; American Treaty of, 1880, ii. 359
 Pe-ling, Viceroy of Kwangtung, i. 122, 123; reforms Chinese prisons, i. 123, 124, 125
 Penang, existence of Supreme Court at, 1807, i. 86
 Perak, treaty with East India Company, 1818, i. 86
 Perestrello, Rafael, i. 3
 Perjury, offence of, ii. 113
 Permanent Court, Belgian appeal to, 1927, i. 295, 296, 297
 Persia: subjects of, in China, i. 305; extraterritoriality in, ii. 171
 Peru, trade with China, i. 6
 Petroleum stocks, seizure of, ii. 64
 Philippines, the, i. 4
 Phoenicians, the, ii. 156
Phoenix, H.M.S., assault on officers of, 1813, i. 54, 55
 Phra-klang, the, i. 82
 Pigott, of the *London*, kills Chinese, 1819, i. 56, 57
 Piracy: in Chinese law, i. 110 (see also under *Navigateur*); suppression of, i. 285, 290, 292; offence of, in British law, ii. 110, 111
 Pires, Thomé, i. 14
 Playfair, Mr., British assessor at Mixed Court, 1893, i. 368, 369
 Plowden, Mr., i. 140
 Poland, subjects of, in China, i. 305
 Police Laws, Chinese, i. 397
 Police Offences, Chinese Law of, ii. 20
 Police Tribunals, Chinese, ii. 35, 42, 43
 Pondicherry, French appeals carried to, i. 323

- Ponsborne*, the, murder of surgeon's mate of, 1781, i. 40
Pope, the, sends embassy to China, i. 15
Portuguese: contact with Chinese, i. 3; expulsion from Lampaco, Chinchew, and Ningpo, i. 3; oppose Weddell at Canton, 1637, i. 5, 28; jurisdiction at Macao, i. 37, 55, 168; resist Chinese jurisdiction, i. 42, 48, 49; homicide of Chinese at Macao, i. 62; execute criminal at Macao, 1826, i. 62; do not claim jurisdiction at Macao, 1832, i. 66; enrolled as tributaries of China, i. 91; boycotted by Chinese, ii. 288
Pottinger, Sir H., British Plenipotentiary, 1841, i. 174; rebukes British merchants, 1842, i. 253
Potts, Samuel, agent of East India Company at Ayuthia, i. 82
President of China, libel on, 1919, i. 385
Princess Augusta, the, renegade from, 1754, i. 34
Prison, Mixed Court, i. 363, 364, 370
Prisons: American, inadequate, i. 322; British, at Tientsin and Chefoo, ii. 362, 363, 364; Chinese, i. 107, 121 *et sqq.*, ii. 268 *et sqq.*; modern Chinese, ii. 10, 11, 44, 75
Privy Council: appeal to, i. 241, 322, ii. 121; jurisdiction of, ii. 78
Procedure, Chinese Criminal, ii. 23 *et sqq.*
Procurators, Chinese, ii. 37, 38
Prostitution in Chinese prisons, i. 125
Protection, right of, ii. 99, 103
Protégé system, i. 297, 298, 303, 304, 385, ii. 152
Providence affair, the, 1800, i. 45
Provisional Court, Shanghai, i. 396, 397
Provisional Government, Chinese, ii. 16
Prussia, trade with China, i. 66
Psyche, the, seaman from, missing, 1839, i. 161
Publications, Chinese Law of, i. 389, 390
- QUARRELLING, Chinese law of, i. 116, 117
Quay-lung, trial of, ii. 260 *et sqq.*
Quedah, treaty with East India Company, 1800, i. 86
Quickstep, the, i. 312
Quiescent policy of British Superintendents of Trade, 1834-1838, i. 142
- RASTELL, Mr., negotiates treaty with Surat, 1624, i. 80
Rasteropny, the, case of, 1904, ii. 144
Real property, devolution of British, in China, ii. 119, 120, 295, 296, 297
Rebus sic stantibus, doctrine of, i. 294, 295, ii. 170
Rechitelni, the, case of, 1904, ii. 144
Registration of Movables, Chinese Law of, ii. 25
Residence, restriction of right of, ii. 153
Responsibility, doctrine of, i. 91, 119, 120, 121, 169, ii. 265 *et sqq.*; and China's decadence, ii. 267 *et sqq.*; period of, i. 117
Revolution, Chinese, 1911, i. 375
Reynvaan, M., attack on, 1847, i. 264
Richardson, Captain, of H.M.S. *Topaze*, i. 60
Richmond, the, seaman of, wounds Chinese, i. 31
Rigaud, M., death of, i. 339
Roberts, Rev. I. J., rifling of house of, 1847, i. 262
Robinson, Sir G. B., i. 140, 141; and Mr. Keating, ii. 213 *et sqq.*
Roman law, i. 1, ii. 3; position of foreigners in, ii. 157
Ross, John, murder by, ii. 131
Royal Admiral, the, seaman of, wounds Chinese, 1788, i. 44
Royal Charlotte, the, and murder of Chinese, 1810, i. 52, 53
Royal George, the, thefts from, 1778, i. 38
Rumbowe, treaty with East India Company, 1831, i. 86
Russell, Earl, i. 329; and British subjects in Chinese service, ii. 303, 304
Russia: attempts to trade at Canton, i. 5; trade caravans to China, i. 5; expands to Amur, i. 5; embassies to China, i. 5, 15, 19, 89, 91; treaties between China and, 1689-1852, i. 72, 88 *et sqq.*, 286; anomaly from Chinese standpoint, i. 91; later treaties, i. 286 *et sqq.*; ii. 319 *et sqq.*; Chinese despatch to, 1729, ii. 225 *et sqq.*
Russian consuls, jurisdiction of, i. 323
Russian Students' Union, case of, ii. 74
- SAIGON, French appeals carried to, i. 323
St. John's Island, i. 3

- St. Louis*, U.S.S., at Canton, 1844, i. 178
St. Petersburg, Treaty of, 1881, i. 288, 289, ii. 321, 322
Salangore, treaty with East India Company, 1818, i. 86
Samoa, extraterritoriality in, ii. 102, 167
San Marino, subjects of, in China, i. 305
Saris, Captain, i. 80
Schoffer, murder of, 1851, i. 274
Scott, Francis, execution of, 1773, i. 37, ii. 288
Sea Swallow, the, homicide on, ii. 105
Security merchant, i. 7, 8
Seng Woh, rendition of, 1868, i. 231
Seoul, Treaty of, 1899, ii. 342, 343
Serbia, subjects of, in China, i. 305
Seth, Mr., and coolie traffic, 1854, i. 272, 273
Settlements, position of, i. 345
Seward, Mr., American Minister to China: proposals of, i. 341, 342, 346; view of extraterritoriality, ii. 97, 98
Sha Piao Ping, case of, ii. 54
Shanghai: incident at, 1844, i. 253; murder of Chinese at, 1845, i. 265; opened to foreign trade, 1842, i. 342; neutrality of, i. 347, 364. *For Mixed Court and Municipal Council*, see under appropriate headings
Shanghai University, i. 388, 389, 390
Shansi, trial of fooyuen of, i. 129
Sheen, Edward, and the *Neptune* affair, 1807, i. 51, 52, 53, ii. 183
Sherry, Mr., compensation for death of, claimed, i. 183, 184
Siam: factory in, i. 81 *et seq.*; war with Golconda, i. 83; European treaties with, i. 84 *et seq.*; extraterritoriality in, i. 81 *et seq.*, ii. 166, 171
Siamese murders Chinese at Macao, 1805, i. 48, 49
Siamese law, reform of, i. 269
Sikkim-Tibet Convention, 1893, ii. 356
Sim Kye-lim, case of, ii. 63
Sino-German Agreement, 1920, i. 291
Sino-Japanese War, 1894, ii. 141, 142; Treaty, 1895, i. 299; Treaty, 1903, i. 299
Sino-Soviet Agreement, 1924, i. 383
Sir E. Pellow, the, boat of, plundered, 1810, i. 53
Smith, Mr., ordered to leave Canton, 1779, i. 38
Smith, Mr. John, debts of Mr. Keating to, ii. 217
Smith, Captain: accompanies Captain Elliot to Macao, i. 161; Captain Elliot's message to, i. 164; proceeds to Chuenpi, i. 165, 166
Smuggling in China, ii. 109
Soulié de Morant, M.: and Mixed Court, i. 379, 380; and French Mixed Court, i. 402
South Manchuria: status of Japanese in, i. 300; treaty respecting, 1915, ii. 339
Sovereignty, conception of, ii. 155
Spanish: massacre Chinese, 1603, i. 4; arrival in China, i. 4; attacked by English seamen, 1799, i. 44
Spanish assessor at Mixed Court, action of, 1906, i. 374
Spec, the, i. 312
Special Courts, Chinese, ii. 34, 40
Speculators, Mukden, ii. 54, 55
Spiteful, H.M.S., arrival in Hong Kong, 1844, i. 204
Stanton, Rev. Vincent, assaulted, 1848, i. 254
Star Chamber, ii. 162
Staunton, Sir G. L., i. 5, 15; influence over Lord Macartney, i. 16; account of Macartney Embassy i. 16; sent to Ho-Shen, i. 18; and Macartney Embassy, i. 46
Staunton, Sir G. T.: opposes the kotow, i. 23; and Macartney Embassy, i. 46; and the *Neptune* affair, 1810, i. 51, 52; on position of foreigner in China, i. 102, 103; speech in Parliament, 1833, i. 103, 104; translation of Chinese Code, 1810, i. 97, 109, 122, 152; comments on Pe-ling's report, i. 126
Steel, Henry, i. 67
Steelyard, the, ii. 161
Stephen, Sir James, opinion of, 1862, i. 236
Sterling, Mr., Attorney-General of Hong Kong, i. 231
Stoppage of trade, custom of, i. 11
Stowell, Lord, i. 87, 88, 154
Strozzi, Laurentio, ii. 160
Su Ah-cheng, asserted ownership of *Arrow*, i. 277
Success, the, French seaman of, kills Portuguese, 1780, i. 39
Sun Yat-sen, Dr., i. 384
Sunqua, bankruptcy of, 1774, i. 75
Su-Pao newspaper, case of, i. 365, 366
Superintendent of Trade: appointed, i. 137; jurisdiction of, i. 139;

- power to make regulations, i. 188, 192, 193; powers of, i. 194, 195, 198, ii. 212 *et sqq.*, 271 *et sqq.*; appeal to, i. 196, 197; position of, i. 228, 229; office separated from Governorship of Hông Kong, 1859, i. 235, 240
- Supreme Court, Chinese, ii. 25, 34, 35, 37
- Supreme Court for China, British, i. 242, 243, 244, ii. 77
- Supreme Court of the United States, i. 322
- Surat: treaty with, 1624, i. 80; factory at, i. 82
- Surgeons, liability of, in Chinese law, i. 115
- Swatow, Anglo-Chinese college at, ii. 62
- Swatow Opium Guild case, 1879, ii. 135
- Sweden: trade with China, i. 6; treaty with China, 1847, i. 249, ii. 308, 309, 310; treaty with China, 1908, i. 303, ii. 2, 350, 351
- Switzerland: subjects of, in China, i. 305; treaty with China, i. 303, ii. 2, 352
- Sylph*, the, attempted piracy by seamen of, 1833, i. 67
- Syme, Mr., action of, at Amoy, 1852, i. 271, 272
- Syria, subjects of, in China, i. 305
- TAH POH CHI, rendition of, 1868, i. 231
- Taiping Rebellion, i. 238, 345, 347; capture of Shanghai, 1853, i. 311; rebels occupy Nanking, i. 330
- Tang Shao Yi and extraterritoriality, ii. 52, 53
- Tao Kwang, Emperor, i. 144
- Taotai, Shanghai: and customs cases, i. 311; degraded, i. 312; and Mixed Court, i. 348, 349, 350, 351, 360, 364, 365, 368, 370, 371, 374, 381; and French Mixed Court, i. 400, 401; judgment of, ii. 371, 372, 373
- Taxation: at Canton, i. 7; of foreigners in China, ii. 10
- Teo Yee-swee, case of, ii. 64
- Terranovia affair, the, i. 47, 48, 49, 58, 59, 69, 177, ii. 183 *et sqq.*, 189 *et sqq.*
- Thomas Coutts*, the: enters Macao, i. 163; proceeds to Whampoa, i. 164
- Thompson, J., and status of Macao, ii. 293, 294
- Tibet, extraterritoriality in, i. 307
- Tibet Trade Regulations, 1908, ii. 358
- Tientsin, Treaties of: American, 1858, i. 284, 285, ii. 317 *et sqq.*; French, 1858, i. 284, 285, ii. 314 *et sqq.*; French Convention of, 1886, i. 304, ii. 362; Russian, 1858, i. 286, 287; German, 1861, i. 289, ii. 322, 323, 324; Dutch, 1863, i. 292, ii. 326; Spanish, 1864, i. 292, ii. 327, 328; Belgian, 1865, i. 292 *et sqq.*, ii. 328 *et sqq.*; Peruvian, 1874, i. 302, ii. 343, 344; Brazilian, 1881, i. 302, ii. 344, 345, 346; British, 1858, i. 236, 268, 269, 284, 285, 327, 331, 332, 333, 338, 339, 341, 359, 360, ii. 135, 312 *et sqq.*, 368; proposed revision of, i. 317 *et sqq.*; Danish, 1863, i. 291, ii. 324, 325; Japanese, 1871, i. 298, 299, ii. 334, 335; Portuguese, 1862, ii. 292
- Tientsin, German doctors at, ii. 68, 69
- Tientsin British Committee of Information, ii. 51, 52
- Tientsin Massacre, 1870, i. 336
- Times, The*: attack on Hong Kong Supreme Court, 1863, i. 240, 241; and extraterritoriality, 1865, i. 242, 243, 340; and Terranovia, ii. 199, 200, 201
- Title Deeds, Chinese Law of, ii. 25
- Togo, subjects of, in China, i. 305
- Tokyo, earthquake at, 1923, ii. 69
- Tonga, extraterritoriality in, ii. 167
- Tongking, extraterritoriality in, i. 30, 81
- Topaze*, H.M.S., affairs of, 1821, i. 59, 60, 61, 120
- Torture: illegal, in Chinese prisons, i. 129; judicial, in China, abuse of, i. 130 *et sqq.*; causing death, i. 133, 134, 135; abolished in West, i. 135
- Trade, prohibited, i. 198
- Trade-marks in China, ii. 132, 133, 134
- Tramwaymen at Shanghai, case of, ii. 56
- Treason, offence of, ii. 115
- Trial officers, ii. 24, 34, 40
- Tripoli, extraterritoriality in, i. 168
- Troughton*, brig, plundered, 1835, i. 69
- Tunis, extraterritoriality in, i. 168
- Turkey: extraterritoriality in, i. 90; British treaty with, 1809, i. 95;

- subjects of, in China, i. 305 ; the Capitulations, ii. 164 *et sqq.* ; and extraterritoriality, ii. 169
- Turner, Mr. E. H., and extraterritoriality, ii. 48, 49
- Twenty-One Demands, the, i. 300
- Tyler, Captain, memorandum of, ii. 143
- UNEQUAL treaties, i. 95
- United States : enters China trade, i. 6, 7 ; resists search of American vessels by British, i. 49 ; recognises Chinese jurisdiction, i. 49, 58 *et sqq.* ; treaties with Siam, i. 85 ; and question of jurisdiction, 1844, i. 177 *et sqq.* ; Treaty of Wanghia, i. 187, ii. 277 *et sqq.* ; case of General Burgevine, i. 238, 239 ; control of American subjects, i. 239, 230 ; Treaty of Tientsin, i. 285, 286, ii. 317 *et sqq.* ; jurisdiction in Kwangtung, i. 307, 308 ; Chinese customs question, i. 311 ; jurisdiction in China, i. 322, 323 ; and Chinese law reform, ii. 2 ; Washington Conference, ii. 5, 6 ; extraterritorial jurisdiction in China, ii. 78, 79, 80, 126 *et sqq.*, 388 *et sqq.* ; Court for China, ii. 78, 79, 394 *et sqq.* ; protection of industrial property, ii. 131 *et sqq.* ; opium, ii. 136, 137 ; and Sino-Japanese War, 1894, ii. 141, 142 ; and Russo-Japanese War, 1905, ii. 145 ; treaties with China, ii. 359, 360, 361
- Urmston, Sir James, on position of foreigners in China, i. 104
- VATTEL, " Law of Nations," i. 11, 12
- Vaucher, M., drowned, 1847, i. 264
- Visigoths, laws of, ii. 158, 265
- Vladislavich, Count Sava, i. 91
- Vladivostock, Russian appeals carried to, i. 323
- Volage*, H.M.S., arrival of, 1839, i. 158
- Wabash*, the, plundered by Chinese, 1817, i. 55, ii. 288
- Wade, Sir T., and Treaty of Tientsin, i. 320 ; memorandum of, i. 328, 329, 331 ; view of bankruptcy, i. 332 ; and aims of British merchants, i. 334, 335 ; at Conference of Ministers, 1879, i. 342 ; and Mixed Court, 1880, i. 361, 362, 363 ; and Chefoo Convention, ii. 369, 370
- Walker, Captain, assaulted, 1826, i. 62
- Walker, Mr., Vice-Consul at Foochow, i. 271
- Walpole*, the, lascars of, beat other seamen, 1787, i. 43
- Wang, Dr. C. H. : and Belgian treaty, i. 293 ; and Chinese law, ii. 3 ; at Washington Conference, ii. 5, 6 ; and Extraterritoriality Commission, ii. 10.
- Wanghia, Treaty of: 1844, i. 147, 170, 187, 249, ii. 277 *et sqq.* ; Chinese version of, ii. 278 *et sqq.*
- Wanhsien affair, ii. 56, 57
- Wantung*, the, case of, ii. 57
- Ward, General, i. 238
- Warnings, Chinese Law Relating to, ii. 22
- Washington, Treaty of, between Mexico and China, 1899, i. 303, ii. 349, 350
- Washington Conference, 1922, i. 387, ii. 6, 51
- Weapons, dangerous, in Chinese law, i. 114
- Weddell, Captain, at Canton, 1637, i. 5, 27, 28
- Whampoa, Treaty of, 1844, i. 147, 187, 249, 285, ii. 281 *et sqq.* ; Chinese version of, ii. 282 *et sqq.* ; homicide at, 1721, i. 30
- White, James, murder by, 1864, i. 323
- White, Samuel : enters service of King of Siam, 1685, i. 83 ; petitions Parliament, 1687, i. 83
- Williams, David, piracy and murder by, 1863, i. 323
- Willoughby, Professor, and opium, ii. 139
- Wills : of British subjects in China, ii. 110, 111 ; of American subjects in China, ii. 127
- Winchelsea*, the : seizure of goods of surgeon of, 1818, i. 55, 56 ; assault on Captain Adamson of, 1821, i. 57
- Witkowski, Fritz, and extraterritoriality, ii. 47
- Witnesses, in consular courts, i. 149, 150, 197
- Woodward, A. M. T., and opium, ii. 137
- Wu Ting-fang, Dr., i. 384, 385
- Wuchow Mission, seizure of, ii. 63

- YEETUCK, bankruptcy of, i. 77
 Yeh, Imperial Commissioner, and
 lorcha Arrow, 1856, i. 277
 Yen, Hoppo, conduct of, i. 123
 Yngshaw, i. 38
 Young, Mr., attacked by Chinese
 soldiers, 1834, i. 69
 Yuan Shih-kai, President, ii. 13,
 14, 17
 Yuen, Governor of Canton, 1824,
 on Chinese prisons, i. 127
 Yugo-Slavia, subjects of, in China,
 i. 305
 Yunnan opium case, 1916, ii. 136
 ZANZIBAR, extraterritoriality in,
 i. 235, ii. 100, 101, 102
 Zau Lih-tsz, prosecution of, 1925,
 i. 389
 Ziar, Judge, i. 397

Form 45

327

K 256

v. 2

Keeton

| | | |
|----|--|--------|
| 27 | Keeton Development of extraterri- toriality in China | 230676 |
|----|--|--------|

Mar. 18 32

China
230676

Form 47

327

K 256

v. 2

PENNSYLVANIA STATE LIBRARY

Harrisburg

230676

In case of failure to return the books the borrower agrees to pay the original price of the same, or to replace them with other copies. The last borrower is held responsible for any mutilation.

Return this book on or before the last date stamped below.

Mar 19 '31

